LAND LAWS OF TAMIL NADU

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FOREWORD

The author of the book Prof.A.Chandrasekaran is a recently retired Professor from Dr.Ambedkar Government Law College, Chennai. He took M.L. Degree in the year 1972 in "Property". He secured First Rank in the University. In 1973 he joined the then Madras Law College, now Dr. Ambedkar Government Law College. He retired in 1999 after serving as Vice-Principal and Principal-in-charge at Coimbatore and Chennai Law Colleges. Voluntarily he relinquished his chance of promotion as Principal. He was the Special Officer for the establishment of the Government Law College at Tirunelveli. He is the author of the text book on 'Transfer of Property' in Tamil which was published by the Text Book Society.

The subject 'Land Laws' is introduced as a new subject in the curriculum of the Law Colleges in the current academic year. Realising the difficulties underwent by the students of the law colleges in procuring the text books on different enactments for the said subject, Prof.Mr.A. Chandrasekaran took pains of bringing out this text book. I have gone through the book. I could not resist my word of appreciation for the strain taken by the author in collecting all the enactments and bring them under one cover, so that the students need not strain themselves to get the individual enactments. The author has extracted some of the judgments also in his comments which definitely of some use to the students community. The compilation of the different laws relating to Land Tenure would satisfy the compulsory need of the students.

The author has elaborately discussed the land tenure laws from its origin and has furnished a very good picture of the development. The development of the law is always a need to the society to suit the changing circumstances. The author has dealt with the subject in a very elegant manner. Similarly with regard

to the Acts conferring certain rights on the agricultural tenants have also been dealt with in detail, in simple language, understandable by the students. Equally the Rent Control Act has also been dealt with by the author in a proper manner to satisfy the need of the College students coupled with their examination point of view.

Even though the book has been mainly brought out by the author to cater the needs of the College students for their new subject "Land Laws", I am sure this book is an asset for the Lawyers also since most of the subjects relating to the rights over the lands had been brought in a handy manner. The references made by the author in respect of the latest decisions is a proof for his undaunted work.

The author is bringing out the same book in Tamil also which is going to be published recently. I am sure every one connecting with the legal profession would definitely be benefited by this book.

I wish the author all the best in all his efforts in future as he is still wants to write some of the text books on various subjects.

S. JAGADEESAN

DEDICATED
TO
MY PARENTS
&
BROTHERS

PREFACE TO THE THIRD EDITION

Land laws are one of the major branch of developing laws. In the development of economic sphere of India, Land laws play important role. Amendments and changes bring notable developments in the country. So many reforms were brought immediately after independence. Abolition of Ryotwari system, Jamindari system and Inams are notable here. Constitution of India removed right to property. This is a historical event. At the same time, steps are taken to protect individual rights. New concepts are being accepted towards development and welfare of the nation.

In the year 2013, an Act called Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was passed. Similarly in the year 2017, the Act known as Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 was enacted. The two enactments bring tremendous changes in their respective fields. The Act of 2013 introduces for the first time, provisions for social impact analysis, recognises non-owners as affected persons, a mode of acquisition requiring consent of the displaced and statutory entitlements for rehabilitation. It introduces provision for fair compensation and transparency in the acquisition proceedings. At the same time, provides suitable provisions for rehabilitation and resettlement for the displaced persons. The Act of 2017 of Tamil Nadu, tries to establish framework for the regulation of rent and to balance the rights and liabilities of landlords and tenants

and to provide fast adjudication process for the resolution of disputes, and matters connected therewith or incidental thereto. This third edition of Land Laws of Tamil Nadu covers both enactments and necessary recent case-laws are included. I am happy to see that this book has been received and appreciated by students, advocates and as well as public. I hope that this will also be appreciated well.

I take this opportunity to thank M/s. C. Sitaraman & Co. Pvt. Ltd., Chennai, for their continuous support and encouragement for all these years.

I thank S. Ramasubramanian for his neat and wonderful typeset workmanship. I also thank S. Ramamoorthy for accurate proof correction. My thanks to M/s. Graphic Design Shop for their creative wrapper work and M/s. Mani Offset Printers, Chennai, for their neat printing and binding.

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CHAPTER I

EARLY REVENUE ADMINISTRATION IN TAMIL NADU

From the origin of land it will be seen that the first occupant of land by virtue of his possession acquired property right therein. It was pointed out in *Secretary of State* vs *Virarayan*, 9 Mad 175 that "according to what may be termed the Hindu Common law, a right to the possession of land is acquired by the first person who makes a beneficial use of the soil". The interest of the person thus taking possession is not a limited but an absolute one. Thus the property became private in his hand. Men later became associated with others for mutual advantage and protection and settled down in fixed habitations called villages. Then holdings were allotted to each member, they exchanged and redistributed with each other. This property was at first in the family and the common property soon developed into individual property. Indian idea of land is considered to be communal one.

In the Tamil Nadu area, republican form of village community was prevalent. At the dawn of Indian history the Territory now forming Tamil Nadu was peopled by a section of the Dravidian race, divided into number of Kingdoms. The Dravidians appeared to have attained a high degree of civilization. They had developed a maritime intercourse with Persia, the Greeks and the Romans and excelled in Wars and the Arts. They were acquainted with the art of Government which was far from despotic and conducted to public welfare. (Kanakasabai Pillai - Tamils p110). At its head was a hereditary Monarch, whose power was controlled by five councils, known as the Five Great Assemblies, and the supreme power in the State was vested in both.

These Five Great Assemblies consists of the representation of : (1) the People ; (2) the Priests ; (3) the Physicians ; (4) the Astrologers ; and (5) the Ministers. The first, safeguarded the rights and privileges of the people ; the second, directed all religious ceremonies ; the third, attended to all matters affecting the life of the King ; the fourth, fixed auspicious times for public ceremonies ; and the fifth, attended to the collection and expenditure of revenue and the administration of justice. A land tax amounting to one sixth of the produce which was payable in money or in kind at the option of the farmer was levied by the King. The earlier Tamil literature extant shows that the Dravidians had passed from the nomadic stage to that of settled agriculture. The farmers known as *ulavan* formed the landed aristocracy of the Country and occupied the high position in society next to Arivars or Sages. They were also called *vellalars* or *karalars.*

The Aryans were essentially a race of agriculturists and practised agriculture as their calling. It was Manu's view that the Hindu Kings did not even recognise individuals but made their arrangements that the payment of the share to State with village elders representing the village community, which was the fiscal Government and which, as representing the shareholders, possessed a complete and indefensible property in the land. The very village system, constituted and in force from early times, clearly establishes the fact that one of the former Governments had ever laid claim to property in the soil. Manu says that "A King may take of grain an eighth part, a sixth, or a twelfth, according to the difference of soil and the labours necessary to cultivate it". The King may levy even a fourth part out of necessity in times of urgency, of war or invasion. Manu's dictum is not based on any new theory, but is only a record of the actual practice that had previously obtained as declared by the Sages and other Rulers who went before him. The state of society described by him reveals a well established order of things.

As we have seen early that possession of land thus acquired by the first occupant. Then a question may arise with respect to what is the right of the King. It is clearly laid down by the ancient law givers that the King is entitled to a share of the produce of the land taken, for protecting the life, liberty and property of the people under his charge.

The Mohammedan conquest and their Rule did not alter the internal constitution of villages and the rights of landed property, except by increasing the tax and diminishing the value of the Ryot's interest by collecting the revenue by means of farmers and their influence was certainly not felt in the Territories of the Pandian and Nayak Rulers [*Sivasubramaniya* vs *Secretary of State of*

Madras 9 Mad 285]. Like Hindu Kings the Mohammedan Kings in India also did not claim any proprietory right in land. That the Mohammedan practice did not, in any way differ from theory will be seen from the following extract taken from Field's Land holding : "That the ownership of soil was not in the Sovereign is proved by a variety of arguments. One of these is remarkable, being drawn from the fact that the Europeans purchased land when they wanted it. Aurangazeb purchased the parganas of Lundi, Palam, etc in the vicinity of Delhi. Akbar purchased land for the Forts of Akbarabad and Illahabad; Shah Jehan purchased for the Fort of Shah Jahanbad; ... There is a native saying that the land belongs to the Zamindar and the revenue to the King', and according to Mohammedan law the Sovereign has a right of property in the tribute or revenue; but he, who has tribute from the land has no property in the land".

So it is clear that both under Hindu and Mohammedan laws land was not vested in the King and that the Proprietor had an absolute ownership and dominion therein, subject to the payment of share of the produce.

Under the English Law, the King is the owner of all land within the realm, and that the subject can only have an interest therein. Early British administrators with that feudal idea of property concluded that the same idea prevailed in India also. Their predecessors Mohammedan Rulers while making radical changes, simply enhanced the assessment. This resulted in many cases, abandonment of cultivation of lands. The Government in order to get its revenue let the uncultivated lands to the persons who agreed to cultivate at the enhanced assessment. Such frequent transfer led the early administrators to conclude that it did so by virtue of proprietorship vested in it. So in 1796, the Government of Madras declared that no one in India should alienate the land without a written instrument from their superior landlord. In fact Sir Thomas Munro remarked earlier that the "private property was never existed in India excepting in the Malabar Coast". It was the policy of Government at the commencement of the last Century to allow all lands to become private property. It was intimated with despatch of Lord Wellesley that it never could be desirable that the Government should act as the Proprietor of lands and should collect the rents from the immediate cultivator of the soil. They claimed revenue as tax and not as rent. Acting on the view that it was the Proprietor of the soil, Government purported to confer the proprietory right therein on Zamindars at the time of the permanent settlement in the year 1802. Subsequently it was found that the Regulation had the effect of interfering with the established rights of Ryots and Regulation IV of 1822 was passed which declared that the provision of Regulations XXV and XXXI of 1802 were not intended to interfere with the actual rights of the Ryots.

The British faced several problems in the administration of land. They did not have trained officials and were not acquainted with the local customs. Therefore they found it convenient to follow their Mohammedan predecessors. The intermediaries called Zamindars introduced by Mohammedans and some Hindu Kings, who were experienced with the revenue collection were legally recognised. Gradually they introduced several reformatory measures. When the British found one system inadequate and defective, they introduced another. The Madras Permanent Settlement Regulation Act, 1802 was thus introduced to regulate the land revenue system in Madras. It recognised the Zamindars as the lawful collectors of revenue as the proprietors of lands. Later on it was abolished and ultimately converted into ryotwari.

MELWARAM AND KUDIWARAM

The common law of India recognises two rights in land,*viz.* (1) that of the Sovereign or his assignee and (2) that of the Ryot holding individually or as a member of a joint family or Village Community. The sovereign has a right to demand revenue in the shape of a share of the produce from all cultivated lands which is liable to variation at his will and which is known as *rajabhogam* (the share of the Raja or Government), *melwaram* (Superior waram or share) *melpadi* (Superior half) *metikoru* or *metipalu* which has committed in Ryotwari tracts to a money payment; and the share of the cultivator is known as *kudiwaram* (Cultivator's share), *kilpadi* (lower half), *koru* or *metipalu.* All the other interests in land are derived from one or the other. Subject to the payment of his share, the Sovereign has no right to the possession of lands. The term *melwaram* is strictly applicable only to the share received by Government; but in practice is loosely applied to the share received by any person from the actual cultivator. Thus the share received by the Proprietor of land from his tenant, temporary or permanent, is known as *melwaram*; so also that received by a lessee for a term or otherwise under a proprietor from the cultivator. So also the term *kudiwaram* is strictly applicable to the share taken by the *kudi* or cultivator who is the owner of the soil, but in practice, is often used to denote the share received by the person who actually raises the crop without any reference to his right to the soil (S. Sundararaja Iyengar - Land Tenures in Madras Presidency). The theory of partnership is so suggested between them because of the division of the produce between the Sovereign and the subject.

THE VILLAGE SYSTEM IN TAMIL NADU

The village has been unit of revenue administration in India from the earliest times of which we have any record. The system of Government in the villages was very advanced and it played an important part in ancient Indian polity.

The villages are generally known as gramams. Sometimes they were called according to their size and caste of their inhabitants like, *ur, patti kurichi, kottei, mangalam, agraharam, kudi* and *nattam* etc. Thiru.S. Sundraraja Iyengar in his book on the Land Tenures in the Madras Presidency, elaborately discussed its formation, description, officers, their powers, mode of Government etc. In the early stages, the people, combined themselves into Communities to safe-guard themselves against common dangers. In the open spot selected by the community, a high ground was generally chosen for their habitations, called the *nattam* or *gramanattam.* The common feature of all villages in the east coast is central site generally as a high ground containing habitations, surrounded first by cultivated lands, and then waste, with sometimes the detached land of some other village intersecting the lands of the village.

THE VILLAGE ADMINISTRATION

The village administration was carried on by a chain of officers in regular gradation one above the other. There were two officers in each village representing the King, the *headman,* "the lord of a single village" and the *Karnam*, in earlier times. The former attended to the collection of the King's share of the produce and looked after the general affairs of the village, the latter maintained an account of cultivation. The accounts maintained by the *karnam* operated as a check on the collection made by the headman. The

villages were grouped together, more or less numerous according to their size and importance, which went by different names in different parts of the Madras Presidency. They were know as *mahanams* and *nadus*. In the Pallava Kingdom the *nadus* were constituted with bigger sub-divisions called *kottams*. Sometimes a village was by virtue of its importance constituted into a separate *kottam*. Thondamandalam was divided into 24 *kottams* and the *kottams* or districts were divided into 74 *nadus* analogous to Taluks. The *nadus* were again split into townships called *nattams*. There were 1900 *nattams* in the Thondamandalam Province. Each of sub-divisions were placed in charge of an officer known as *nattan* or *nattu thalaivan*. He was assisted by another officer called *stalla karnam* or *nattu karnam*. A number of these divisions was again made into with Provinces known as *mandalams* or *valanadus* in the Tamil Country. The Province was generally placed in charge of Viceroy known as *arasu, perumal, Raja* and in later times *Nayak* or *Nayakkan*. Thus the Hindu system involved a gradation of officers and at every stage one officer operated as a check on the other. The King treated his Kingdom as a private estate and regularly administered it by means of subordinate officers, whose position was no better than land stewards. There was no room for the existence of an intermediate class of proprietors between the King and the cultivators.

DESCRIPTION OF INDIAN VILLAGE

A village is a tract of Country comprising some hundreds or thousands of acres of arable and waste land; politically viewed, it is a little republic or rather a corporation having within itself its municipal officers or corporate artificers. Its proper establishments of officers and servants consist of the following description: (1) The *Headman*, differently called, *Ambalakaran or Ambalam, Maniagaran* or *Manigar, Nattanmaikaran* who has general superintendences the affairs of the village, settles the disputes of the inhabitants, attends to the police and performs the duty of collecting the revenue within his village; (2) The *Karnam* who keeps the accounts of cultivation; (3) the *Taliary,* whose duty it is to give information of crimes and offences and to escort and protect persons travelling from one village to another ; (4) *Vettiyan* whose duty consists among other things, in guarding the crops and assisting in measuring them; (5) *Kambalakaran, Kambalamkatti* or *Madavetti,* who distributes the water of the streams or reservoirs in just proportion to the several fields ; (6) the *Boundaryman* known as *kavali* or *kavalkaran* who preserves the limits of the village and gives evidence respecting them in cases of dispute ; (7) *Panchangi* or *Prohit* who proclaims the lucky and unpropitious periods for sowing and the resting; (8) the *Brahman* who performs village worship ; (9) the *Schoolmaster,* who teaches the children in the village to read and write ;

(10) the *blacksmith* called as *Kammar, Karumar* or *Kollan* for making implements of husbandry ; some villages have goldsmiths called *Tattan* ; (11) the *Carpenter* called as *Tatchu* for making implements of husbandry and building the dwelling of the ryot; (12) the *Potter* called as *Kusavan ;* (13) the *washerman* called *Dhobi* and *vannan* ; (14) the *Barber* called *Ambattan* and *Navithan*; (15) the *chakli ;* (16) the *cowherd* who looks after the cattle ; (17) the *Doctor* called *vaidyan* ; (18) the *Dancing girl* ; (19) the *musician* (20) the *poet* and (21) the *Nattamgar* or *Shroff* ; The above description represents the full complement of village servants who are found in fully developed and well do villages. Some villages however do not possess all of them, but only such as are absolutely necessary for an agricultural population. They usually contain the following 12 men comprising (1) the Headman (2) the Karnam (3) the Nattamgar (4) Kambalakkaran (5)Taliary (6) the Potter (7)the Blacksmith (8) the Goldsmith (9)the Carpenter (10) the Barber (11) the Washerman and (12) the Astrologer. They are remunerated by grants of land or land revenue or by a small share of the crops. Assignment of land given to them are known as *nilamanyam* or *sarvamanyam*. The lands are attached to the office and the grantee is entitled to its enjoyment during his office.

THE DIVISION OF A TAMIL VILLAGE

The whole area of a Tamil Village is divided into (1) *warapet* (2) *tirwapet* (3) *tarisu* and (4) *poramboke.* Warapet are cultivated lands which give waram or share of the produce, generally nanja or wet lands, which has now been commuted to a money payment in ryotwari tracts. Tirwapet are land which pay a tirwa or fixed money tax, generally punja or dry lands. Originally all lands are warapet, but subsequently warapet and tirwapet in the case of dry lands. Warapet and tirwapet are also used to denote lands paying revenue, as distinguished from manyams, lands paying no revenue. As under the Ryotwari system the share of the produce payable to the State in warapet lands has been commuted into a money payment, warapet and tirwapet are classified under one head. Tarisu are waste or uncultivated lands which are divided into two classes, *sheykal karambu, cultivable waste*, and *anadi karambu immemorial waste.* Poramboke literally means setting apart, and is applied to lands incapable of cultivation or set apart for communal purpose and exempt from revenue in both cases. They are of various kinds classified according to the purpose for which they are set apart, such as burning grounds, temple sites, threshing floors, roads (road poramboke), rivers (river poramboke), channels (channel poramboke), tanks (eri or tank poramboke), the sites of villages (nattam poramboke), and the paracheri or suburbs of the village occupied by the huts of Pariahs(Cherinattam or cheri poramboke). In fact, a land that does

not yield revenue is known as poramboke. Under the Ryotwari system waste is classified into (a) assessed (b) unassessed and (c) poramboke. Assessed waste are cultivated lands which have been left to uncultivated, lands relinquished by Ryots and lands bought in by Government in revenue sales. Unassessed waste are lands to which no classification or assessment has been assigned, because they are considered unfit for cultivation. Poramboke denote lands set apart for public or communal purposes. They are also unassessed.

Nattam or *gramanattam* is the site on which village habitations are situated and is held free of assessment. It is included in poramboke and is known as *nattam poramboke.* It is on this site the villagers build their houses. In nattam are included *pilakadai* or backyards of house and *kollai* or homestead a small enclosure near the house. Both are held free of assessment.

THE SYSTEM OF VILLAGE GOVERNMENT

The system of village government and the part it played in ancient Indian polity are thus described by the Rev.Dr.Caldwell a high authority on Dravidian customs and manners, says the learned Bishop :—

"The village system of India is one of the most remarkable features of Indian civilization. Generally the civilisation of the Hindus is inferior to our own, but in some particulars it is in advance of ours; and one of the particulars in which it claims the advantages is the fact that **every Hindu village is an organised Municipality**. The greater number of English towns and all English villages are mere collection of houses without any bond of connection or corporate life, without Rulers, without office bearers, and without any organisation for the preservation or advancement of the common interests. In India on the contrary, **every village of any respectability is an incorporation**. It has its council of headmen, its rights of jurisdiction, its revenues, and its meetings for the transaction of its public business. Generally every village has its watchman, its artifices, its priest, its astrologers, appointed by the community and paid by means of endowments or rates; it has also a Village Munsif (or petty unpaid Magistrate), a Mirasidar or potail (a sort of Mayor or Revenue Commissioner) and an accountant all nominated by the community and appointed by Government. The municipality ordinarily makes itself responsible for the settlement of disputed claims by arbitration, for the punishment of petty offences, and for the preservation of the peace, ; and though Courts and Cutcherries have been established in every Province for the administration of justice on the European plan, nine-tenths of all the cases that arise are investigated and settled by the heads of the village under the

council tree, without any reference to Government authorities ; and it is astonishing how much legal skill, how much judgment and good temper these Village Panchayats exhibit. The decision of the heads of the village carry no legal force ; they cannot be carried into effect without the consent of the parties concerned and this is an important safeguard against abuse but they are almost invariably accepted and submitted to when they are believed to be just and are supported by the public opinion of the neighbourhood; and in most instances the only appeal that is made is from the decision of one village to that of another and more distant one".

"This municipal organisation is so ancient and firmly established that it may be regarded as the most permanent institution in India. Dynasties have arisen and fallen; religious sects and schools of philosophy have flourished and disappeared, but the village municipality retains its place undisturbed. One race of conquerors after another has swept over the Country, but as soon as the wave has passed the municipality again merges into view, every man returns to claim his rights, and the old landmarks are restored. In the Hindu eyes the nation occupies but a small place, the dynasty a still smaller one; the institutions which he regards as all important are his caste and his village, and it is in these that all his feelings of patriotism centre. That love of home, that attachment to the same spot, and that disinclination to emigrate, that certainty we feel respecting every Hindu who has left home that sooner or later he will return and spend his earnings in his native place are, or to be attributed in a great part, if not altogether, to the influence of the village system in India."

FORM OF GOVERNMENT : Each village had an assembly called the gramapraverticum known as *sabhai* or *mahasabhai* in brahmadaya or devadaya villages or as *Koottum*, *urar koottum* or council of elders in other villages. For the purpose of carrying on its functions the assembly was divided into number of committees. The Uttaramerur inscriptions of Paranthaka I lays down the Rules for the selection of members to the village committees. It also lays down the qualifications of electors and the method of election. The village was divided into 30 wards. The election was conducted through *kudavolai* method. The election was held once a year. The assembly was met by beat of tom-tom at a public place, in the village temple, or under a banyan or pepul tree. The voting was by *'aye'* or *'nay'*. The proceedings of the arbitrator were recorded by an officer called the *madhyasta* (arbitrator) who was generally the karnam. The assembly was all powerful in dealing with the village and its property.

JOINT LIABILITY*:* One of the features of the village system was that the whole community were liable to the King for the entire revenue due from the

village. The Hindu King did not deal with the individuals but with the villagers as a body. The individual was responsible to the community for his share of the produce and the whole community were responsible for the revenue due from the village. The community settled with the King the amount they were liable to pay and distributed it among their members according to their means. In the earlier settlements made by the British administrators known as village settlements, this collective responsibility was recognised; so also in the early Ryotwari system. In order to prevent the introduction of strangers, the community claimed a right of pre-emption in the case of alienation by one of their members.

CAUSES FOR THE DECLINE OF VILLAGE COMMUNITIES: There are many causes for the decline of village community system. They are, (1) imposition of higher assessment, (2) recognisation of individual responsibility to Government, (3) introduction of Ryotwari system, (4) abolition of payment of fees by the villagers to village servants and (5) finally, amalgamation of villages.

As long as the assessment was low, the tenants were benefitted and were able to pay swami bhogam to the landlords, apart from payment to the Government. When the assessment became high they were unable to pay the high assessment, gave up their lands which were granted to the others by the Government. These things happened during the Mohammedan days. As a result, the village community system affected. Secondly adoption of revenue system by the British Government in earlier period to a great extent damaged it. Under the village settlement system at first introduced, the assessment was fixed on the whole village and the villagers as a whole were liable therefor. This system was not affected even when the assessment was high, since they distributed liabilities among themselves. But the Government not recognised the individual's responsibility to the village community. Hence every one is individually responsible and not collectively. Thirdly the introduction of the Ryotwari system and its attendant darkhast Rules, dealt with heavy blow to the village communities. Under this system the villagers were asked once and for all to declare the amount of land which they would engage and pay for it. The rest of the lands were given to some others, who were willing to take them up. This resulted the introduction of strangers to the villages. Fourthly abolition of fees by the villagers to village servants affected the system very much. Village servants were paid not merely by assignments of land or land revenue but also by fees in grain. This payment of fees enabled village public opinion to effectively control them. But about in 1860, the Government materially changed the policy and resolved to abolish this mode of payment. By the Act II of 1894, a fund was created for the purpose of payment of

village servants employed in the villages. The village servants ceased to be paid by the villagers and became village officials. Finally the grouping amalgamation and division of villages led to destroy the village community. It was one of the duties of the village servants to preserve the boundaries of village unaltered, as such reservation was essential to community . But the Government in 1895 assumed the power of grouping or amalgamating two or more villages or their portions so as to form a new village or of dividing one village into two or more villages. This ultimately led to abolition or creation of village offices. For all these reasons the village community ceased exist now.

MIRASI TENURE

The term mirasi tenure is applied in South India to denote the tenure of villages held jointly by co-sharers who constitute themselves the proprietors thereof according to their shares; and is, infact, the survival of the system of village communities. They enjoy the produce to their respective shares in what is known as *Marakkal Kootu*. For many years, some villages in Chengalpat were able to preserve this system. But due to series of administrative acts, this village community system was weakened and finally the policy of Sir Thomas Munro put an end to the principle of co-operation and the self-contained organism on which village communities were essentially based.

DISTINCTIVE FEATURE OF THE MIRASI TENURE : The distinctive feature of the mirasi tenure is the division of the village into *shares* or *pangus*. The number of *pangus* into which a village is divided would have been determined by the number of original settlers. Each *pangu* comprises *warapat* and *tirvapat* lands (wet and dry lands) in proportions calculated to yield the same income in the shape of produce. These lands need not be contiguous and may be situated in different parts of the village. The ownership of a *pangu* carries with it the right to proportionate share in the enjoyment of the *Sheykal karambu* or cultivable waste, the *anadi karambu* or immemorial waste forests, mines and such common property. The village is divided into *karays* and each karray comprises so many *pangus*.

AGRAHARA VADIKY AND PANDARA VADIKY: Mirasi villages in the districts of Madurai, Ramnad and Tirunelveli were of two classes. Agrahara vadiky and Pandara vadiky. Agrahara vadiky was a village in which the absolute proprietory right was vested in Brahmins.The village was divided into *Pangus* and *karays* and the right to each *karay* was recorded in the village kosham *i.e.* the register of village lands. The enjoyment is in form of *Karaiyedu*. The

village was common to the whole body of proprietors and each proprietor could sell, mortgage or transfer his share in any way he pleased, though it had to be assented to by the other sharers. All the sharers were jointly and severally liable for the whole revenue of the village. Pandara vadiky took its name from it being granted to non-brahmins and was more a distinction by caste than of tenure. This was also divided into *pangus* and *karays* which were recorded in the kosham and were subject to purchase and sale. Non-brahmin mirasi village in South Arcot went by the name of Manavadoo Villages.

The judgment reported in 1929 discusses in detail the history and incidence of Jagir and Mirasi tenures.

Further Justice Venkatadri elaborately discussed the rights of Mirasidar in W.P. Nos 1920 to 1924/164 dated 20th April 1967.

KARAY VILLAGE : Villages held jointly by co-sharers in the districts of Madurai etc. went by the name of karay villages. The co-sharers in these villages, were known as Karaikarens who held the lands in shares. According to Mr.Nelson the origin of karay villages was due to totally different causes. It was a sort of partnership entered into by the owners of lands agreeing to hold them in common for the purpose of guarding themselves against the rapacity and injustice of the State and the form of enjoyment was *karaiyedu*. *Karay* literally means division and is applied to a division of lands in a village.

COMPARED TO RUSSIAN MIR : The Russian Mir is an instance of the common property in land above described. The land belonged to the commune and the individual as a member of the commune had merely usufruct, the right to the temporary enjoyment of a share . The commune was responsible for the discharge of those liabilities which by way of taxation or otherwise were imposed by the Government. This community of rights and privileges, the members of this political unit and the lands which belonged to them collectively were called the *mir*.

THREE MODES OF ENJOYMENT : The first mode of enjoyment was known as *samudayam* (in Sanskrit) or *pasankarai* (in Tamil) known also as *sumohi*. It comprised two varieties namely *samudayam* and *karaiyedu*. Under the former the mirasi of entire cultivated area belonged to the whole body of mirasidars. The lands are cultivated either by the joint stock company and labour, and cattle and implements of all the members of the community, the entire produce being shared by them according to their respective shares, or separately by each member, the produce from all the cultivated lands being subsequently shared by all of them according to their respective shares. The

latter form or *karaiyedu* which literally mean putting or effecting division, lands were temporarily cultivated in separate shares by the co-sharers forming the members of the community and were subject to re-distribution at stated intervals say, once in 30, 27 or 12 years.

The karaiyedu system in Tanjore was discussed in *Paramasivam Iyer* vs *Chinnathambi Padayachi* (1959) II MLJ 68 as follows: " under the system of karaiyedu the tenants or kudivaramdars are co-sharers of the entire villages each individual tenant cultivating specified piece of lands, corresponding to his share or interest in the whole, for a definite period decided upon by the community. There is a periodical distribution of lands between the tenants so that each sharer will get distribution of the land on the basis of the productivity of the soil and sort and not on the basis of the extent alone".

This type of rotation of lands among the Ryots of the villages was prevalent in South Arcot District till 1876. This system of *karaiyedu* had survived in Ganapathi Agraharam inam village in Papanasam Taluk of Thanjavur district till the year 1946 and given up on the eve of estates abolition.

In second form of enjoyment known as *palabhogam, atchandrarkam* or *arudikai* all the cultivated lands, warapat and tirwapat were permanently distributed. The cultivated lands were held in sevaralty with individual ownership and individual liability for the payment of the Government revenue.

In some districts, all the lands of a village had become vested in single individual by purchase or other means. When it was known as *ekhabhogam* or *ejaman gramam.*

With the abolition of all estates including Inams, and the introduction of Ryotwari settlement, the Mirasi system has also ceased to exist.

CHAPTER I-1

1. RYOTWARI SYSTEM

Under the Madras Presidency, three categories of tenures existed. They were briefly (1) Ryotwari system (2) Zamindary system ; and (3) Inamdari system. We will briefly consider these tenures one by one.

The common law of India recognises two rights in land, *viz* (1) that of the Sovereign or his assignee ; and (2) that of the Ryot holding individually, or as a member of a joint family , or a village community. Land revenue is an important item of revenue belonging to the State. The Sovereign has right to demand revenue in the shape of a share of the produce from all cultivable lands. Subject to the payment of his share the Sovereign or State has no right to the possession of lands. The system by which it is collected is known as the Ryotwari system.

The person with whom Government enters into direct engagement under the Ryotwari system is called the Ryot meaning in arabic, 'subject' or 'protected'. The true conception underlying the Indian land system seems to be the idea of partnership. The ***melvaram*** and the ***kudiwaram*** are independent interests in the land. The owner of the ***melwaram*** cannot so long be receiving the revenue interfere with the discretion of the owner of the kudiwaram as to the user of the land. The person entitled to ***kudiwaram*** may be regarded as the owner of the soil. The ***melwaram*** interest in this view is to be regarded as an encumbrance on that proprietory right. ***Melwaram*** is not rent in the strict sense of the word but a tax.

Ryotwari or Kulwar System was first introduced into the British possession by Col. Read in 1792. The system introduced by Col. Read embraced the

survey of every holding in the district and fixation of field assessment based on productive powers of the soil. It fixed and recorded a specific sum of money as the maximum revenue payable on each field or tract of occupied land and when the revenue was payable in kind, it commuted it into a money payment. The Ryot was not regarded as the proprietor of the soil but only as cultivating tenant. While the settlement was made with each Ryot for the lands held by him an element of village system was introduced by making him collectively liable for the entire demand as the village. This system was open to several objections. By fixing only maximum demand payable by him and he did not know what it was until he actually reaped the crops. He was made liable for the default of others.

The intention of the founders of the Ryotwari system was to make the assessment on land permanent. Col. Read's proclamation issued at the time of its introduction declared that the assessment was fixed 'for ever' and Sir Thomas Munro declared that it was 'fixed' and 'permanent'. Subsequently, however, change of view had come upon the authorities in England arising from the loss of prospective income to the State. It was decided later to abandon the policy laid down in the year 1861. Ultimately it was decided that Ryotwari settlement though not permanent should at least be durable for a period of 30 years. This system was introduced in tracts in which Permanent Settlement or the Zamindary system was not existed or had failed. At present, the Government has the right to make a fresh settlement of the revenue after a period of say 30 or 40 years.Under the Ryotwari system the soil itself is taxed and the assessment is fixed on the land and does not depend upon the description of the produce, or upon the claims of certain classes of persons to reduced rates. He is liable to pay the revenue due on his field to the Government directly and without any intermediary. The revenue payable to Government includes also Cesses levied for roads, education and charges for using water etc.

DISTINGUISHING FEATURES

The Ryotwari system in force at present means the division of all arable land, whether cultivated or waste into blocks, the assessment of each block at a fixed rate for a term of say 30 years or 40 years and exaction of revenue from each occupant according to the area of land thus assessed. The occupied area may remain either constant or may be varied from year to year at the occupant's pleasure by the relinquishment of old blocks or the occupation of new ones. The distinguishing feature of this system is that the State is brought

into direct contact with the owner of land and collects its revenue through its own servants without the intervention of an intermediate agent such as the Zamindar etc., and its object is the creation of peasant proprietors. All the income derived from extended cultivation goes to the State.

Patta: When a Ryot is first put into possession of land, he is furnished with a document, called *patta* which is liable to revision at each annual settlement called *Jamabandi*. According to **Sadasiva Iyer. J.** Government is under no statutory obligation to issue any *patta* at all to a Ryotwari proprietor (*Samarao* vs *Secretary of State*, 1914 MWN 388). It sets out the name of the pattadar, the extent of his land, and its survey number. It is not evidence of title, but only of possession.

Ryotwari Tenure : In Madras Presidency the principal tenure of land is the Ryotwari system of holding under Government. This system has not been established in this Presidency by legislative enactment. Baden Powell has rightly observed, "Really the 'Standing orders' of the Board are the Land Revenue Code of this Province and no one can thoroughly master the revenue administration without studying these in detail". The characteristic feature of this system is that the State entered into a direct engagement with owner of lands, namely the Ryot, for the payment of revenue and collects the revenue through its own servants *i.e.*, the village officers. Subject to the payment of revenue the Ryotwari proprietor has an absolute interest in the soil. In unfavourable seasons, remissions are granted on liberal principles. In short, under Ryotwari System the Ryot enjoys all the advantages of a perpetual lease, without its disadvantages and responsibilities. A Ryotwari owner is not the owner of the bed of a river adjacent to his land; the bed belongs to the Government. The revenue due on the land is a first charge on it and takes precedence over other debts or encumbrances. In Ryotwari village the Government is the owner of waste and unoccupied lands. It can assign such land to an applicant on appropriate term. Some lands are reserved for the communal use of villages, such as tanks, streets, channels, threshing fields, burial grounds etc.

GENERAL RIGHTS AND POWERS OF AN ABSOLUTE OWNER OR RYOT :

(1) TRANSFERABILITY OF INTEREST : A registered pattadar may, so far as he is concerned, alienate, sublet, mortgage, sell, bequeath or otherwise dispose of the whole or any portion of his holding. This power is specified in the Board of Revenue's S. O. 28 R2, Sec.2 of Regulation XXVI of 1802 (Land Registration) requires the Collector of each district to keep

registers for registering landed property paying revenue to Government, and to register all transfers from one proprietor to another. But want of registry does not affect the validity of the sale.

(2) RIGHT OF CULTIVATION : At the time of the introduction of Ryotwari system into this Presidency, settlements were entered into with the cultivating proprietor whom Government found on the land and treated him as the proprietor thereof. The Ryotwari proprietor being the owner of the soil, it was held in a series of cases that he was entitled to carry on the cultivation of his lands in any manner he chooses best. Subject to the payment of revenue, a Ryotwari proprietor enjoys an absolute proprietorship over the soil and can deal with or use it in any manner he likes.

(3) RIGHT TO COMMIT WASTE : The Ryotwari proprietor is not bound to cultivate his holding and can commit unlimited waste. The obligation to pay revenue of course remains unimpaired and cannot be escaped by allowing the land to be fallow. This is clear from B.S.O. 28 Rule 5: "The registered owner of a Ryotwari holding is bound to pay the fixed assessment on it, whether cultivated, waste, or fallow, in the prescribed instalments".

(4) RIGHT TO MINERALS : The proprietorship of the Ryotwari holder extend to the subjacent minerals . B. S. O. 28 provides this Rule 7 :"A holder of Ryotwari tenure is entitled to work minerals on his land, but is liable to pay therefore a separate assessment in addition to the usual assessment for surface cultivation".

(5) TREASURE TROVE : The Proprietorship of the land does not extend to the ownership of treasure *i.e.*, anything of value, hidden in the soil. Under the Treasure Trove Act (VI of 1878) the finder of treasure exceeding Rs.10 in value, is required, on pain of penalties prescribed under that Act, to give notice to the Collector of the District, of the nature of the treasure found and deposit it in the nearest Government Treasury or give security for its production when required. If such claims are not established in a Civil Court or if the Collector finds that the treasure is ownerless and there is no claimant other than the finder, the treasure will be handed over to the finder. If any person claims as the owner of the place where the treasure is found and the claim is not disputed, the finder is given three fourth of the treasure or its value in money and the residue is given to the person claiming.

(6) RIGHT TO TREES : The *pattadar* is absolutely entitled to the trees standing on his holding and is not separately charged therefor. Separate pattas

are not now issued for trees except for palmyrah as in the Tirunelveli district. Before 1853 the system in vogue in the Madras Presidency was to levy a separate tree tax. In 1853 the Government ordered its abolition : But three years later the Government reverted to the old system so far as the Tirunelveli District was concerned owing to special reasons applicable to that area.

(7) RIGHT TO RELINQUISHMENT : A Pattadar can relinquish the lands in his holding or any portion thereof provided the relinquished part is accessible and the relinquishment is in writing and made sufficiently early in the season to enable another Ryot to commence cultivation upon it. After relinquishment, it becomes the property of Government which it can dispose of in any way it likes in which case his liability to pay the assessment for the land will cease.

(8) RIGHT TO WATER : Every Ryot is entitled to right to water to irrigate his fields. However he has no right that water should be supplied to him through a particular source. Government has no right to alter the sources, means, works etc from or by which the water for irrigation is supplied to the Ryot entitled thereto. A Ryotwari proprietor whose source of water supply is interfered with another proprietor is entitled to an injunction, restraining him from such interference.

(9) RIGHT TO PATTA : As we have seen earlier, the Government gives a patta to the Ryot or holder of land. A patta is a document which states among other matters, the revenue fixed on the land at the last settlement.

OBLIGATIONS :

The liabilities on the part of the Ryot are :

(*i*) Liability to pay Land Tax

(*ii*) Liability to Water Cess

The Ryot is under the obligation to pay rent in respect of all ryoti land in his holding, whether the lands are cultivated or not. Similarly he is liable to pay water Cess when water is supplied to his land.

CHAPTER I-2

2. THE ZAMINDARI SYSTEM

During the British period, there were two systems, namely Ryotwari system and Zamindari system were in force apart from Inamwari. Under the Ryotwari system, the land owner paid tax or revenue direct to the Government. In fact, under the Hindu system of revenue administration there was no place for the employment of an intermediate class of proprietors interposed between the Sovereign and the subject. But under the Zamindari system which was introduced later, through Permanent Settlement, an intermediary class was introduced in order to help the Rulers of the Country in the collection of revenue. The common law of India recognises two rights in land, *viz.* (1) that of the Sovereign or his assignee ; and (2) that of the Ryot holding individually, or as a member of a joint family, or village community. The Melvaram interest represents the royal share of the income from the land. This right is really of the nature of a tax. From its very nature it is clear that it is a right which resides in the Government. It is necessary to note, however, that right may be parted with by the Government and may thus become vested in private persons.

HISTORY OF THE ZAMINDARI SYSTEM

Before the Permanent Settlement :— Under the Hindu system of revenue administration there was little room for the employment of an intermediate class of proprietors interposed between the Sovereign and the subject. The introduction of such a class was an innovation made by the Mohammedans. The authors of the Fifth Report have attempted to trace the origin of the word 'Zamindar' to the time of the Hindu Rajas. The existence of hill Zamindar in the Northern Sirkars and of Poligars in the south who claim descent from the

ancient Sovereign of the Country and who exercised Sovereign rights within their territories shows that the status of Zamindar originated in their way besides the conversion of old Hindu Chiefs into Mohammedan officials.

During the Mohammedan period the Zamindari system took shape. Their settlement in the country being in the nature of a military colony, they did not trouble themselves with the details of revenue administration. "Foreigners by birth, by religion, language, and constantly engaged in war from the very first, they found great difficulty in a plain which demanded the close and constant supervision of a native hereditary prince"(Hunter). The Hindu system involved a close scrutiny and local knowledge, and the checks and counter-checks which it provided were distasteful to them. They therefore, preferred the system of intermediate landholders who would take the trouble off their hands and who should have both power and influence to enforce the revenue demands against individuals, and in the Hindu divisional officers they found such a body ready to their hands. Thus the Mohammedan conquest led to the system of intermediate landholders and of farmers and renters and to the introduction of Persian names and terms to denote ideas connected with land tenures, though those names and terms rarely imported any fresh ideas. But they did not alter the internal constitution of villages except by increasing the revenue thereon. The difference between the Hindu system and Mohammedan system was that the Hindu system, from the office of Minister down to that of village headman was based on the principle of hereditary succession, while the Mohammedan system was anti-hereditary.

The classes of Zamindars were recognised by the Mohammedan Government who may roughly be classed as hill zamindars and zamindars of the plains. The hill zamindars were allowed to continue in their hereditary possessions, on payment of a tribute which was fixed with reference to the amount of public dues demandable by them from Ryots. On the other hand zamindars on the plains who were generally the descendants of the revenue officers under the Hindu Rajas and who were completely subdued by the Mohammedans, were never acknowledged as independent or tributary chiefs, nor having any proprietory right to the lands within their districts. Thus in the south, there were Poligars or Palayakarans whose position resembled that of hill zamindars of the Northern Sirkars. A Palayam often comprised only one or few villages. Unlike the feudal barons of Europe Poligars and Palayakarans never claimed any proprietorship over the soil nor did they ever regard the cultivators of the soil as their serfs.

Thiru. S. Sundararaja Iyengar in his book on *"Land Tenures in the Madras Presidency"* gives an account of Zamindari system and discusses rights and

liabilities of zamindars in detail. The word Zamindar literally means a land holder and in the eye of the Government he was no more than an officer or Collector of revenue without any lordship over or proprietory right to the lands under his charge. He was merely an officer whose duties according to the terms of his appointment were to superintend the portion of the Country committed to his charge, to do justice to Ryots and peasants, to furnish them with the necessary advances for cultivation and to collect the revenue payable to Government (Fifth Report p11). He was strictly accountable to Government for the amount he collected which was not regarded as tribute but only as jumma or revenue. In the later stage the Government entered into an agreement with the Zamindar for the payment of a lump sum which was for a year or a term of years.

PERMANENT SETTLEMENT

The Permanent Settlement in India is intimately connected with the name of that high minded noble man and statesman, the Marquis of Cornwallis. By the term Permanent Settlement is meant the settlement in perpetuity of the Government demand with an intermediate class of persons, known as Zamindars, Poligars, Mittadars or proprietors in pursuance of the policy inaugurated by the Marquis of Cornwallis who was, then the Governor-General of India.

In devising a suitable system of revenue collection the Government of Madras was guided by the experience gained in Bengal. In Bengal, the East India Company at first dispensed with the services of the Zamindars, Collectors and native Dewans were appointed for the collection of revenue, but the system was unsuccessful owing to the ignorance of the local conditions on the part of the British Administration. The Zamindari system was thereupon encouraged and a decennial settlement was tried for sometime. As the system seemed to be satisfactory and political and financial considerations favoured such a policy, Lord Cornwallis proposed the permanent settlement which was finally established in 1793 by Regulation I of that year.

ADVANTAGES : Before the introduction of the permanent settlement the public assessment was fluctuating and arbitrary and the whole Zamindari was liable to equestration in case of even a partial failure of the kists. Being exposed to indefinite demands from the State, the Zamindar could not afford to show moderation in his demands upon his Ryots. The result was the neglect of agriculture with the consequent failure of the Zamindars to pay the revenue demanded from them. The Permanent Settlement on the other hand, contained a productive principle. By fixing in perpetuity the Government demand and

making it unalterable, security was afforded to the Zamindar who in his turn was expected not to rack-rent the tiller so that there might be a general diffusion of prosperity. "In order to simplify and regulate the demands of the land holders upon their tenants, the first step is to fix the demand of Government itself". (Appendix to the Fifth Report). The Permanent Settlement was thus intended to bring about a radical reform in the revenue administration of the East India Company, whereby the value of property was to be increased and the position of Zamindars and thetenancy substantially improved. The Permanent Settlement could be introduced only in the ancient Zamindaries in the southern districts of Madras Presidency and in some of the estates previously held by the Poligars. It was not possible to introduce Zamindari system in other districts which formed a great portion of the Presidency.

The causes of the permanent settlement not to be found in a single circumstance, but in a variety of circumstances operating at the same time. Political and financial considerations had not a little to do with the introduction. Firstly the course of events in England even before the advent of Lord Cornwallis tended in the same directions. Moreover it was the spirit of age that brought the land tax made permanent in 1798 in England. Secondly, the condition of the East India Company was such that a Permanent Settlement of the revenue become financial necessity. While its servants were making colossal fortunes the Company was drifting to bankruptcy. Thirdly the unsettled state of the Country demanded an immediate settlement with them. Fourthly the desire on the part of Lord Cornwallis to create a landlord class similar to that of Europe, whose very existence should depend on the stability of the British Rule and who in the case of a foreign invasion should be attached to the Company from motives of self interest. Fifthly and lastly the hope entertained by Lord Cornwallis, that by the creation of Zamindars and the making of demand on them permanent there would be no tendency on their part to oppress and rack-rent their tenants and thus the happiness of the people would be ensured. All these circumstances contributed to the adoption of the Permanent Settlement on a principle of revenue administration.

INTRODUCTION OF PERMANENT SETTLEMENT IN MADRAS PRESIDENCY: After the introduction of the system in Bengal, the Court of Directors were so fully satisfied of its excellence and anxious to have it introduced it all over Company's possession. In 1799, positive orders were sent from England that Lord Cornwallis Scheme was to be adopted through out Madras Presidency . On 15.10.1799 the Board of Revenue issued instructions to the Collectors of the Districts for effectuating a Permanent Settlement with the Zamindars. Regulation XXV of 1802 was passed for carrying out the object of the permanent settlement. Section 2 of Regulation

XXV of 1802 conferred the proprietory right of the soil on Zamindars and when it was found that the section interfered with the rights of the Ryots, Regulation IV of 1822 was passed which declared that the former Regulation was not intended to define, limit, infringe or destroy the actual rights of any description of tenants. But these rights are nowhere defined, and this led to frequent disputes between the Zamindar and the Ryot. After trying various pieces of Legislations the Madras Legislature passed the Estates Land Act (1 of 1908). However in some places this system was not successful and hence Ryotwari system was reintroduced in that areas. A large part of the presidency thus unaffected by the Permanent Settlement.

THE DISTINGUISHING FEATURES OF THE PERMANENT SETTLEMENT ARE : (1) The tenure of the Zamindar which was formerly precarious was converted into a permanent one, carrying with it the incidents of heritability and alienability (2) The assessment or peishkush payable to the Government was fixed and was made unalterable so that it could neither be reduced nor enhanced. (3) The right to the waste land within the ambit of the Zamindari was given to the Zamindar without liability for further assessment.

Certain changes were introduced in the existing system by the Board of Revenue. The restriction on the powers of the Zamindars were (1) the Zamindar lost the power of maintaining military establishments (2) he gave up the power to levy taxes. In fixing the peishkush the revenue from salt petre, abkari, taxes personal and professional were excluded and so they continue to be under the control of the Government. (3) the right to grant inams was specifically denied to the Zamindar (4) the right to resume Lakhiraj or revenue free grants were excluded from the assets in the computation of the peishkush and (5) liability for the maintenance of irrigation works was transferred to the Zamindar.

EFFECT OF PERMANENT SETTLEMENT : The effect of the Permanent Settlement has been to convert the precarious tenure previously held by Zamindar into a permanent one. It gave the Zamindars, ancient as well as those created subsequent to 1802, a right to hold their estates for ever on a fixed peishkush with heritability and transferability. On the conclusion of the Permanent Settlement the proprietory right in the soil became vested in the Zamindars, their heirs and lawful successors for ever.

An assessment is fixed at the time of the Permanent Settlement and is known as peishkush. On the fixing of such assessment the Zamindar was granted a *sanad-i-milkiyat-i-istimrar* or deed of permanent property in which the conditions and articles of tenure were entered and he was required to execute a corresponding *kabuliat*(agreement). Any dispute regarding assessment was regulated by the *sanad* and the *kabuliat*.

RIGHTS AND OBLIGATIONS OF THE ZAMINDAR

The Act XXV of 1802 declared that the proprietory right of the soil shall become vested in the Zamindars or other proprietors of land and in their heirs and lawful successors for ever. It gave the Zamindars, ancient as well as those created subsequent to 1802, a right to hold their estates for ever on a fixed peishkush with heritability and transferability. By virtue of the grant by Government in favour of Zamindars under the Permanent Settlement the latter had the *prima facie* title to all lands lying within the geographical limits of their Zamindaries.

(A) RIGHTS OF THE ZAMINDAR

(1) POWER OF DISPOSITION : Section-8 of Regulation XXV of 1802 gave the power to Zamindars to alienate by gift or sale or otherwise dispose of their proprietory rights in their Zamindaries in whole or in part. In order that the alienation may be binding on the Government, the transfer is required to be registered in the office of Collector .

(2) RIGHT TO WATER : In the Urlam's case the Full Bench of Madras High Court unanimously held that the ownership of a river or stream depended upon the ownership of the banks and bed. In *Secretary of State* vs *Subbarayalu*, 36 Mad 559 P.C. observed that " A river only belongs to the Government when the solum of the stream belongs to the Government". Thus it is clear that in India the Government ownership of a river is based upon the ownership of the bed in the case of a public navigable or tidal river and of both the banks in the case of other rivers. A Ryot in a permanently settled estate who takes water at a place therein where both the banks and bed belong to the Zamindar is not liable to pay water Cess. The leading case on the subject of the Zamindari right to water is the well known Urlams case *i.e. Prasad Rao* vs. *Secretary of State*. 40 Mad 886.PC. The judicial committee held that the effect of the Permanent Settlement was to vest the channels with their head sluices and branches and subsidiary channels and tanks and reservoirs in the Zamindaries through or within whose Zamindaries the same respectively passed or were situate. The Zamindar can make common use of the water as he likes upto this extent and no water Cess can be levied. He can legally authorise his rights to the water.

(3) RIGHT TO MINERALS : Where the title of a Zamindar to a village as part of his Zamindary is established he is presumed to be the owner of the underground right in the absence of evidence that he has parted with them and this right is recognised in the Standing Orders of the Board of Revenue, wherein it is declared that no claim to minerals is to be made on behalf of the

State in estates held on ***sanads*** of Permanent Settlement. The leading case on this subject is *Hari Narayan Singh* vs *Sriram Chakravarthi* 37 Cal.723(PC) where the Zamindar executed a permanent lease of an agricultural character and there was no evidence to show either that he parted with mineral rights, or that such right were acquired by prescription, the lessee has no right to work minerals.

(4) RIGHT TO WASTE LANDS : Waste lands in the estate have been conveyed to the Zamindars free of any additional assessment and so the Government has no right to it. In *Narayana Ayyangar* vs *Orr* (26 Mad 252) the plaintiff, a lessee by the Sivaganga Zamindari claimed as against the tenant a right to trees. The High Court made a distinction between trees growing on the waste lands and those planted in the patta land by the cultivators and observed as follows : "In regard to these waste lands the Zamindars is no doubt, the proprietor by virtue of regulation XXV of 1802 and his claim to the trees growing on the waste lands was rightly allowed, but they have no bearing on the rights of the Ryots to trees growing on their own patta lands. Plaintiff was non suited in this case. It was held that the Zamindar has got the right to both warams.

The proposition that waste lands in the Zamindars do not belong to the Government and passed to the Zamindars under the permanent settlement was considered in the well known Urlams case (40Mad 886 PC).

The Zamindar cannot claim the right to take by escheat, as the principles of English feudal law are not applicable to him. The Zamindar is entitled to all porombokes within the limits of the Zamindary.

(B) OBLIGATIONS OF THE ZAMINDAR

(1) PAYMENT OF PEISHKUSH : The first duty of the Zamindar is to pay the peishkush fixed in respect of his estate at the time of the Permanent Settlement.

Peishkush unalterable : The Peishkush thus fixed is permanent and unalterable. The Zamindar cannot ask for remission on account of drought, innundation or other calamities of the season, nor can the Government demand more. In *Gopalsamy Chettiar* vs. *Secretary of State* (61 MLJ 754) it was held that the levy of village service Cess was not an enhancement of the peishkush since it relieved the obligation of maintaining and paying for the village establishments.

(2) LIABILITY TO MAINTAIN TANKS : The duty of maintaining the existing tanks and of constructing new ones which was formally undertaken by the Government has devolved on the Zamindar with whom permanent settlement has been made. His rights and liabilities are analogous to those of a person or a corporation on whom statutory powers have been conferred or statutory duties imposed.

(3) LIABILITY OF WATER-CESS : Water-cess is levied by Government by virtue of Act VII of 1865 when water is supplied or used for the purposes of irrigation from any river, stream, channel, tank or work belonging to or constructed by Government.

ABOLITION OF ZAMINDARI SYSTEM

There are many reasons that led to the Government to abolish this system. They are (1) The rent levied by the land holder from his Ryot was substantially in excess. (2) The assessment levied had no relation to the productive capacity of the land (3) It further led to loss of contact between the Government and the actual cultivator and acted as a brake in regard to agricultural improvement. (4) Most of the irrigation works in estates were in a state of disrepair (5) The complexities of the Zamindari system had led to an immense volume of litigations (6) Many of the records in the offices of Zamindaris were indifferently maintained and the peasantry, most of whom were illiterate, were at the mercy of unscrupulous agents. There was acute discontent among Ryots. The Governments were thereupon convinced that the Zamindary system had outlived its usefulness and that it should be abolished at the earliest possible date. Pending the abolition of the proprietory estates, as a preliminary measure, the **Madras Estate Land (Reduction of Rent) Act,1947,** was enacted. This Act provides for the reduction of rents in estates approximately to the level of the Ryotwari assessments in the neighbourhoods.

The Government then enacted the **Madras Estates (Abolition and Conversion into Ryotwari) Act,1948** which provided for the acquisition on payment of equitable compensation to all estates as defined in the Madras Estate Land Act, 1908, before it was amended in 1936. Under this Act, the Government have taken over all the Zamindari and under tenure estates and melwaram Inam estates.

THE MADRAS ESTATES (ABOLITION AND CONVERSION INTO RYOTWARI) ACT, 1948

The statement of objects and reasons.— In many estates in the Province of Madras, the rents levied by the land holder from his Ryots is substantially in excess of the assessment charged by the Government on similar land in the

neighbouring Ryotwari area and is beyond the capacity of the Ryots to pay. The Zamindari system has perpetuated an assessment which has no relation to the productive capacity of the land. It has further led to loss of contact between the Government and the actual cultivator and has acted as a brake in regard to agricultural improvement. Most of the irrigation works in estates are in a state of disrepair. The complexities of the Zamindari system have led to an immense volume by litigation. Many of the records in the offices of Zamindars are indifferently maintained and the peasantry, most of whom are illiterate, are at the mercy of unscrupulous agents. Zamindari administration has rarely if ever, been as efficient as administration in Government areas. There is thus acute discontent among estate Ryots and there has been a good deal of agitation by them. The Government are convinced that the Zamindari system in force in the province has outlived its usefulness and should be abolished at the earliest possible date.

It was pointed out that such reform involved the removal of all intermediaries between the peasant and the State and that the rights of such intermediaries should be acquired on payment of equitable compensation. The Government accordingly propose to abolish the Zamindari system by acquiring all estates governed by the Madras Estates Land Act, 1908, including whole Inam villages and converting them into Ryotwari, paying equitable compensation of the several persons having an interest in the estates.

Till 1865, when the Rent Act was passed the Zamindar did not enjoy even the right of enhancing the rent at all. It was in 1865 then statutory provision was made giving the right to the Zamindar to enhance rent under certain condition. Of course, this was confirmed in 1908 and 1936, under the Permanent Regulation and the Patta Regulation read together, there was no right for the Zamindar to raise the rate of rent. The Prakasam Committee which went into the question, elaborately, has given the final tie to the claim of the Zamindar to have proprietorship of the soil as well as the right to enhance the rent. The object of this Act was to compensate only the right to collect rent. Further it suggested to vest in Government all these rights claimed by the Zamindar, lock, stock and barrel. The Act of 1948 removed the word "Proprietor" used in the definitions and in its place the words "principal landholder' was used.

In this Act, a compensation was given to the pre-settlement estate in the same basis as the Inams and to the post-settlement estates as if they are Zamindaris.

The Impartible Estate Act of 1904 was repealed by this Act.

CHAPTER I-3

3. INAMS

Inam is an Arabic term signifying, favour, reward or gift. It is a beneficial tenure known originally by the Sanskrit name ***manyam*** can be traced to a very remote antiquity in India. It was the custom of the Hindu Government to grant assignments of lands, revenue free, or at low quit rents, for the payment of troops and civil officers, for the support of temples and their servants, and charitable institutions, for the maintenance of holy and learned men, or for rewards for public purposes. Grants made by the Kings and Ministers are borne out by deeds or ***'sasanas'***, containing all the details. Most of them are found etched on copper plates or on the stone walls of temples.

If the entire revenue was remitted the grant was a ***sarvamanyam*** **or** ***sarva Dumbala*** manyam. If the remission was of a half of the revenue, it was called ***arthamanyam*** and where a fourth of the revenue was remitted it was called ***chaturbhagam.***

The practice of granting lands in lieu of wages or as a reward for services was continued by the Mohammedan Rulers under the name of ***jagirs.*** This was regularly done in the case of the Moghul officers of State, each of whom held a ***mansab*** *i.e.* a title with an assignment of revenue to support his dignity and also to maintain a certain number of troops, These grants were given in favour of the dependants and relatives of the Rulers. In the period of decline of the Moghul power and before the consolidation of British supremacy in India, many local chieftains and officers of Government granted inam, even though they have no power to do so. The practice of rewarding meritorious services by grant of Jagirs continued by the British Rule. The practice, however

fell into disuse after the receipt of despatches from the Court of Directors, dated 2nd January 1822 and 27th May 1829, in which they recommended **money pensions** rather than grants of lands as the more appropriate means of rewarding the servants of the company on all ordinary occasions.

The term inam or manyam involves a grant of the whole or a part of the melwaram with or without a grant of the land itself. A transfer merely of the kudiwaram right cannot be described as an inam.

The term manyam was applied in South India to land held either at a low assessment or altogether free, in consideration of services done to the State or the community, as in the case of village servants. This is the definition of that word given in Wilson's Glossary, the later signification of the term after the introduction of the Arabic term, 'inam'. The word 'inam' literally means gift. In former times the distinction between a jagir grant and an inam grant was that the former was a large political grant implying conditions of service and the latter a smaller personal grant with no condition of service. The word inam is a generic term applicable to all Government grants as a whole, but in course of time when that word alone was used without any sort of qualification or restriction, it cause to denote a grant in perpetuity not resumable (*Unide RR Bommarauce Bahadur* vs *Venkatry Naidu*, 7 MIA 128)

MAJOR INAM AND MINOR INAM : When a grant is made of a whole village, it is known as **dehaut** and is technically called **major inam**, when only some lands in a village are granted, it is known as a **minor inam**. These grants are divided into two classes according to the date of their creation, **Tarapadi inam or manyam** and Sanad or Dumbala inam or manyam. A tarapadi inam is one granted at the original formation of a village for village purposes or one inherited or held from an uncertain period as an independent right. The **sanad** or **Dumbala** inam is one that is held under a specific grant from the ruling power by individuals or by religious or charitable institutions.

WHO CAN GRANT ? : Grants of beneficial tenures being thus alienations of the Sovereign's right, whether it be to the soil itself or merely to land revenue, it follows that the Sovereign alone is competent to make them. Under the native Governments such right was exercised by him or by some other officer authorised by him. But when the political confusion prevailed during later period, this power was assumed by various petty chiefs, Zamindars, Poligars and even by renters; and sometimes they were obtained through the collusion of revenue officials. After the Permanent Settlement, the Zamindar was not permitted to create beneficial tenures.

RECOGNITION OF INAMS BY THE BRITISH GOVERNMENT : The large sacrifice of State revenue involved in the alienation of the Melwaram attracted the attention of the British Government at a very early period and made them realise the need for a general enquiry into the titles to inam lands. The Regulation 31 of 1802 was passed with the object of investigating into and trying the validity of titles of persons holding inams and a direction was given to the Collectors requiring them to prepare Register of Inams for each District.

INAM COMMISSIONER : In the year 1859, Mr.G.N. Taylor was appointed as the Inam Commissioner for the Madras Presidency and under his direction most of inams in Southern India were dealt with and title deeds were get granted to the inamdars whose titles were found to be valid by the Commissioner. The conditional principle in the procedure of the **Inam settlement** has been to treat as valid in all those inams proved to have been uninterruptedly held and enjoyed as such for a period of 50 years with or without **sanad** and whatever may have been their origin. Inams of more recent dates, unless supported by valid grants were treated as invalid.

ENFRANCHISEMENT : Besides determining the validity of inams, the Inam Commissioner offered to the holders of certain classes of inams, the privilege of enfranchising their holdings. By enfranchisement meant the surrender by the Crown of its reversionary right in lands held on inam tenure. In the case of inams generally Government possess a right of prospective reversion that can be legally asserted in various contingencies *eg.* extinction of family of the grantee, discontinuance of services exigible, under the grant etc. The inamdar was offered the privilege of having his land freed from the reversionary claims of the State and converted into a freehold title by agreeing to the payment of a reasonable quit rent. (1) **In the case of personal inams** restricted to one or more lives, one half of the full assessment was charged where the grant was for one life only, one fourth where the grant was restricted to two or more lives, and one eighth where the grant was hereditary and without limit as to the number of lives. By agreeing to the payment of the quit rent the inamdar could hold his land entirely free from the reversionary claims of the Government (2) **In the case of service grants,** if the services had been discontinued or commuted or were unnecessary, generally half the assessment was levied and the liability to perform the services was dispensed with.

The conversion by the process of enfranchisement into an absolute property by imposition of quit rent did not imply conversion from inam to some other

tenure. Conversion into absolute property or freehold only meant the dis-annexation of the property from the service, and the relinquishment by the Government of its reversionary right in the property in consideration of the payment of quit rent or additional quit rent.

The preparation of the Inam Register was a great act of the State and was subject matter of great appreciation by the highest Courts in the land. The entries made therein afford valuable evidence as to the title and conditions of the tenure of inam lands. After inams were enfranchised and title deeds issued in pursuance of Regulation XXXI of 1802, the Act, IV of 1862 was passed to confirm and validate the title deeds given by the Inam Commissioner.

LIABILITY TO RESUMPTION OF ENFRANCHISEMENT INAMS : Resumption consists in putting an end to the grant under which lands are held, remitting the services and requiring the grantee to pay the full assessment. Where the subject matter of the grant is the land itself, the grantor in the exercise of the power of resumption, may recover the land itself. A resumed land is like any other Ryotwari land liable to enhancement of revenue at every periodical settlement. In this respect an enfranchised land differs from a resumed land for the quit rent fixed on the former, can never be enhanced. In Government villages, the right of resumption of an inam belongs to the Government.

ABOLITION OF INAMS : In pursuance of avowed policy to abolish all kinds of intermediaries, the Government decided to abolish the whole inam villages left out in earlier Acts and passed the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963.

This Act is similar in structure to that of the earlier Act of 1948 in setting out the provisions providing machineries etc. In the same year, the Act called The Tamil Nadu Leaseholds (Abolition and Conversion into Ryotwari) Act, 1963 was passed for the termination of certain lease holds granted by the Government (99 years lease in some cases and some permanently). The Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 was enacted for the abolition of the minor inams with effect from Ist July 1963 and the introduction of Ryotwari settlements in the lands. It provides for grant of patta for the occupants of both melwaram and minor inams and iru waram minor inams while the melwaramdar who does not get patta, is given compensation.

CLASSIFICATION OF INAMS

The beneficial grants may be divided into two categories as (1) personal grants and (2) service grants

1. PERSONAL GRANTS : Personal grants are those made for the support or subsistence of the grantee in the form of assignment of land or of land revenue in conformity with the mode of conferring benefits adopted in earlier days. They were mainly granted in favour of learned and pious people or officers of State to support them in their old age, to persons unable to earn their livelihood, such as those crippled etc, and was generally tenable for life or in the line of succession upto a certain limit.

Personal grants when made in favour of Brahmins went by the generic name **Brahmadayam** which means grants held by brahmins for their personal benefit. Under this head may be classified what are known as (1) **Adhyanam :** for the service of reciting vedas in pagodas ; (2) **Bharati ;** for the service of reading Mahabarata in pagodas; (3) **Battavritti:** for the subsistence of Brahmins (4) **Panchangam:** for the service of a calendar Brahmin ; (5) **Puranams :** for the service of reading puranams in pagodas; (6) **vedavritti :** for reciting vedas and teaching them to Brahmins ; (7) **Agraharam** grant is a grant of a village or part thereof made to a community of Brahmins ; (8) **Dharmasanam** is similar to agraharam on payment of a fixed favourable rent. (9) **Srotriyam** is a grant in favour of a particular Brahmin family ; (10) **Kairati** is a term applied originally to inams held for personal benefit by Mohammedans and lateraly to those held by persons other than Brahmins. (1) **Jagir** - The tenure of jagir is chiefly Moghul in origin. By jagir is meant a grant of revenue of a district for political or military services. Such grants were made also to the relations of the Ruler for subsistence or maintenance. Apart from these, there were number of personal grants prevalent earlier.

2. SERVICE GRANTS :— The service grants came into existence on account of the custom of the Country to remunerate services rendered by servants, public and private by assignments of land or land revenue, and this system was specially adapted to a country where the revenue was payable in kind. Such assignments varied according to the nature of the services to be rendered. They may be divided into four classes (*a*) grants for private or personal services (*b*) grants for public services (*c*) grants in favour of village servants and (*d*) grants for religious and charitable service.

(*a*) Private or personal service grants : They are grants by which services, private or personal were reserved to the grantor of (*a*) **Amaram** grant. (*b*)

Doratanam (*c*) **Jivitham** (*d*) **Kattupadi** grant (*e*) **Mukhasa Kasavargam** are personal grants.

(b) Grants for public services or purposes of public utility : In these grants the community or a portion of it, get benefit of it. These are called **Dharmadayam** inams. Under this head falls a great variety of inams embracing those held for the support of chattrams, water pandals, village schools, ponds, flower gardens, topes and so forth. The most important of this class are what are called *Dasabandham* inam, means ten in hundred, implying thereby deduction of one- tenth of the revenue. It is a grant of land or land revenue given as compensation for the construction of a tank, well or channel. **Anaikaran, Kulamkaval, Patti, urani, vayakkal** etc. are other kinds of public service inams.

(c) Grants in favour of village servants : An Indian village was a corporation with the complement of servants necessary for an agricultural population who were paid by assignments of land or land revenue or a proportion of the produce called *marahs, russoms* or *swatantarams.* This inam is granted in favour of village officers like the karnam, munsif and village artisans such as carpenter, blacksmith, barber, washerman, potter etc.

(d) Grants in favour of religious or Charitable objects : Religious grants comprise not only grants made in favour of temples and other institutions such as mutts but also those made in favour of the servants employed therein as remuneration for the performance of the various services connected therewith and are denoted by the term **Devadayam.** In many temples special endowment for a certain specific service or religious charity are provided for , which are known as **Kattalais.** Money allowances have also been made by previous governments in favour of temples and mosques for their maintenance, which are known as **tasdik** or **mohini allowances.** Grants in favour of religious and charitable objects were always made in perpetuity and temporary grants in their favour have never been made.

CHAPTER II

RIGHT TO PROPERTY UNDER THE CONSTITUTION

The right to property is one of foremost rights of a common man. It has been subject matter of controversy, since Independence. In order to achieve the goals enshrined under the provisions of the Constitution of India, the successive Governments tried to regulate the property rights from time to time. Originally under Article 31(1) of the constitution it was provided that 'no person shall be deprived of his property save by authority of law'. The right to property was a fundamental right included under Part III of the constitution, at that time. This right was repealed by the Constitution (44th amendment) Act, 1978. Along with Article 31, the Article 19(1) (*f*) was also deleted, which enabled every citizen to acquire, hold and dispose of property. Now the right to property is available only as a Constitutional right under Article 300 A of the Constitution, which says "*No person shall be deprived of his property, save by authority of law*". Now this right to property is no more a fundamental right, and has no place in Part III of the Constitution which deals with Fundamental Rights.

PROVISIONS RELATING TO RIGHT TO PROPERTY

The Articles 31A. 31B, 31C and 300A are existing Articles relating to right to property.

Under **Article 31A**, that no law providing for acquisition of any 'estate' or any right therein extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of rights conferred by Articles 14 or 19 of the Constitution.

Article 31B provides that none of the Acts and Regulations mentioned in the Ninth schedule to the Constitution shall be deemed to be void on the ground that they are inconsistent with any of the rights conferred by Part III of the constitution. **Article 31C** empowers Parliament as well as State Legislatures to enact laws towards securing the Directive Principles specified in Article 39(*b*) and (*c*) of the Constitution and such laws cannot be challenged on the ground that they violate Articles 14 and 19 of the Constitution. **Article 300A** of the Constitution, says that "No person shall be deprived of his property save by authority of law".

REASONS FOR THE ABOLITION OF RIGHT TO PROPERTY AS A FUNDAMENTAL RIGHT

The agrarian reforms, were the foremost and immediate objectives of the Central and State Governments in their planning immediately after attaining Independence. So a series of legislation were enacted in order to sub serve the common good, increase agricultural production and to promote social and economic justice. The land reforms involve ceiling on land holdings, abolition of Zamindaries, protection of tenants and conferment of occupancy rights. Further the Governments have wanted to redistribute the surplus lands among landless. For example, the Preamble of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, speaks broadly about its goals as enshrined under Article 39 of the Constitution. It is pointed out in *State of Tamil Nadu* vs. *Narendra Dairy Farms (P) Ltd.* (AIR 1987 Madras 161) that "the Land Ceiling Act had been enacted to give effect to the Directive Principles of State Policy in Article 39 of the Constitution." The fixing of land ceiling, acquisition of excess land and its distribution to the landless rural population are the prime objects of this Act. Apart from regulation of agrarian economy, in the area of urban property, housing to the people, clearance of slums, and town planning, control of rents, ceiling on urban land ownership were also received consideration of the State Governments. The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, fixes a fair rent, enable the Government to obtain possession of the premises and protect the tenants from unreasonable eviction. Further the Government have undertaken various regulations of private enterprise and nationalisation of some commercial undertakings. Therefore in order to achieve a socialist pattern of society, the Government tried to regulate the right to property of individuals in various ways. These regulations ultimately led to removal of property right as fundamental right and confer on them as a legal right only. This resulted the repeal of Article 31 and introduction of Article 300A in 1979.

One of the aspect of the land reforms is the adequate payment of compensation. On this account many of the land Legislations were challenged and the Courts are in favour of payment of adequate payment of compensation. This led to a number of amendments of the Constitution. Now let us consider the changes that have been introduced periodically with respect to property rights.

CHANGES INTRODUCED UNDER ARTICLE 31

Originally Article 31 consisted of six Clauses. Article 31(1) said that 'no person shall be deprived of his property save by authority of law. Clause (2) was with respect to payment of compensation and Clause 5 was saving clause.

FIRST AMENDMENT

The Articles 31A and 31B were inserted by the First Amendment of the Constitution in the year 1951. The reasons for the insertions were pointed out in the Statement and Objects and Reasons. It said that because of dilatory litigation, implementation of agrarian reform measures were held up. So for the purpose of protecting various land Legislation from attack on the ground that they violated Articles 14, 19 or 31, the Article 31A was introduced. Article 31B protect Legislations included in the Ninth Schedule from challenge on the ground that they were inconsistent with or took away some of the fundamental rights. However the Article 31 was not amended at that time.

FOURTH AMENDMENT

In the year 1955, the Constitution (Fourth Amendment) Act, 1955, substituted Clause 2. It also inserted Clause 2A in Article 31. The result of the amendment was to make the adequacy of compensation non-justiciable. Clause 2A made it clear that the obligation to pay compensation would arise only on transfer of ownership or possession to the State or a State owned or controlled Corporation.

TWENTY FIFTH AMENDMENT

Once again the right to property was amended in the year 1971 which came into force on 20th April, 1972. This Twenty Fifth Amendment again substituted Clause (2) and also inserted Clause (2B). It also inserted Article 31C. This amendment was to overcome the decision in *Cooper, R.C.* vs. *Union of India* (AIR 1970 SC 564) (the Bank Nationalisation case). In this case the Supreme Court held that the compensation had to be a just equivalent in money of the property compulsorily acquired. The Statement of Objects and Reasons

for the Constitution (Twenty-fifth Amendment) Act, 1971 says : "Article 31 of the Constitution as it stands specifically provides that no law providing for the compulsory acquisition or requisitioning of property which either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given shall be called in question in any Court on the ground that the compensation provided by that law is not adequate. In the *Bank Nationalisation* case [A. I. R. 1970 SC 564 530], the Supreme Court has held that the Constitution guarantees right to compensation, that is the equivalent in money of the property compulsorily acquired. Thus in effect the adequacy of compensation and the relevancy of the principles laid down by the Legislature for determining the amount of compensation have virtually became justiciable in as much as the Court can go into the question whether the amount paid to the owner of the property is what may be regarded reasonably as compensation for loss of property. In the same case, the Court has also held that a law which seeks to acquire or requisition property for a public purpose should also satisfy the requirements of Article 19 (1) (*f*). The Twenty Fifth Amendment omitted the word "compensation" and replaced by the word "amount".

As said earlier, this Amendment introduced a new Article 31C which empowered Parliament as well as State Legislatures to enact laws towards securing the Directive Principles contained in Clauses (*b*) and (*c*) of Article 39. The validity of the Twenty Fifth Amendment was challenged and it was upheld in *Kesavananda Bharati* vs. *State of Kerala* (AIR 1973 SC 1461).

FORTY FOURTH AMENDMENT

Finally in the year 1978, the Constitution (Forty-Fourth Amendment) Act, 1978 deleted Article 31 along with Article 19 (1) (*f*) and made the right to property as only a legal right and not as a fundamental right. The right to property was inserted as Article 300A which reproduced the wording as it were under Article 31.

Now the Articles 31A, 31B, 31C and 300A are the existing provisions regarding right to property, after all these amendments.

EMINENT DOMAIN

The State has Sovereign right to take private property for public purpose. This power is known as *eminent domain*. It is like the power of taxation, an offspring of political necessity. The *eminent domain* is the power of the sovereign to take property for public use without the owners' consent upon

making just compensation (*Coffee Board* vs. *Commissioner of Commercial Taxes* AIR 1988 SC 1498). In *U.S. exRel.T.V.A.* vs. *Welch* 327 US 346, the Supreme Court of United States has said that when public need requires acquisition of property, the need is not to be denied because of an individual's unwillingness to sell. When the need arises, individuals may be required to relinquish ownership of property so long as they are given just compensation which the Constitution requires. The taking of property is thus subject to the payment of just compensation. Entry 42 of List III of the Constitution of India deals with 'Acquisition and requisitioning of property'. Under the Indian law also the State can take property for a public purpose and for compensation (*State of Bihar* vs. *Kameshwar Singh* AIR 1952 SC 458). The ideas of public purpose and compensation are thus inherent in Entry 42.

PAYMENT OF COMPENSATION

The payment of just compensation in lieu of the property acquired was contentious matter in India. The Indian Courts always stood in favour of payment of just compensation. In *State of West Bengal* vs. *Bella Banerjee* (AIR 1954 SC 170) the Supreme Court held that 'compensation' meant 'just equivalent' of the property acquired and it was a justiciable matter which the Courts could adjudicate upon. The same view was taken in *State of Madras* vs. *Namasivaya Mudaliar* (AIR 1965 SC 190). The Supreme Court had taken the view that statute was liable to be struck down as infringing Article 31 (2) on the ground that 'compensation' provided by it was inadequate and that 'compensation' ought to be the just equivalent of the property of which a person was deprived and that 'adequacy' of 'compensation' was justiciable matter. Article 31(2) was amended and adequacy of compensation was made as non-justiciable by the Fourth Constitutional Amendment in 1955. In spite of the amendment the Supreme Court took the view that the amended Article 31(2), continue to mean the compensation as given it in *Bella Banerjee's* case since it retained the word compensation. Although the adequacy of compensation was excluded, the law laid down for determining compensation would be struck down if it was irrelevant with reference to the value of the property provided for compensation or the principles prescribed are irrelevant to the value of the property was illusory at or about the time of its acquisition. *Vajravelu Mudaliar* vs. *Special Deputy Collector* (AIR 1965 1017, 1024). This decision was followed in *Union of India* vs. *Metal Corporation* (AIR 1967 SC 367.) However, in *State of Gujarat* vs. *Shantilal Mangal das* (AIR 1969 SC 634) it was held that the question of compensation could not be challenged

on the ground that the just equivalent of what the owner had been deprived of was not provided for. The Court would intervene only if it was 'illusory' or if the principles specified for the purpose were irrelevant.

The Supreme Court held in *R.C.Cooper* vs. *Union of India* (AIR 1970 SC 564) that the Court could intervene not only when compensation was illusory or the principles to determine the same were irrelevant but also when relevant principles appropriate to the property in question were not applied to determine compensation. As the word 'compensation' had come to be interpretated by the words as just equivalent of the property acquired, this word was replaced by the word 'amount' by the Twenty Fifth Amendment of the Constitution in 1971. The Amendment also clarified that the 'amount' may be given wholly or partly otherwise than in cash. The substitution of the word 'amount' was upheld in *Kesavananda Bharati* vs. *State of Kerala* (AIR 1973 SC 1461) and said that the 'amount' was not the same concept as 'compensation' and the Courts would not go into the question of its adequacy. Further it said that the principles laid down for fixing the amount must be reasonable and relevant to the property acquired and the amount fixed should not be illusory or a fraudulent exercise of power.

In *Chanad Mal* vs. *State of Haryana* (AIR 1975 P & H 102) the property was purchased for one lakh rupees and some more amount was spent for its improvement. The land was acquired by the State for Rs.5,000/- only payable over next ten years at the rate of Rs.500/- per year. The High Court struck down the law holding that this amount had no relation with the value of the minerals to be found in the land and that it was 'illusory and arbitrary' and was 'shocking to the judicial conscience' and the conscience of every reasonable human being.

Under Article 31 (1) the property can be taken only by authority of law and not by executive action. Under Article 31 (2), the State could acquire or requisition property for a public purpose only.

As we have seen earlier, Article 19 (1) (*f*) and Article 31 (2) were deleted by the Constitution (Forth-fourth Amendment) Act, 1978. It was not given retrospective effect. So the validity of any law made prior to 20th June, 1979 shall be open to challenge on the ground of contravention of these Articles. In the result, all the case law, applied to Article 19 (1) (*f*) or Article 31 (2) (as amended) on 19th June, 1979 shall be material in determining the validity of a law of acquisition of property which was enacted before 20th June, 1979.

SAVING OF CERTAIN LAWS

The Articles 31A, 31B and 31C deal with 'saving of certain laws'.

ARTICLE 31 A

Article 31A says that no law providing for acquisition of any 'estate' or any right therein extinguishment or modification of any such rights, shall be deemed to be void on the ground that it is inconsistent with or takes away or abdriges any of rights conferred by Articles 14 or 19 of the Constitution. This Article was originally inserted by the First Amendment with retrospective effect and was further amended by the Fourth, Seventh and Forty-fourth Amendments. The object of this Article is not only to validate acquisition of Zamindaries or abolition of Permanent Settlement without interference from Courts but also to protect social welfare Legislations. However, it was held that acquisition of lands to promote a housing scheme (*Vajravelu Mudaliar* vs. *Special Deputy Collector* AIR 1965 SC 1017) or acquisition of land for building a City or Town (*Nagpur Improvement Trust* vs. *Vithal Rao* AIR 1973 SC 689) were nothing to do with agrarian reforms. But an enactment to take over private forest land without payment of compensation and assignment of such private forest to poorer sections of the rural agricultural population was upheld (*State of Kerala* vs. *Silk Manufacturing Company, Gwaliar Rayon* AIR 1973 SC 2734). Abolition of Inams was to implement agrarian reforms since it would provide land to landless person [*Md. Shaukat Hussain Khan* vs. *State of Andhra Pradesh* (AIR 1974 SC 1480).] Agrarian reforms will include provision for the development of rural economy, encouragement self cultivation, equitable distribution of lands, transfer of surplus land to the village Panchayat for the use of general community, settlement of agricultural labour and so on.

Article 31A (1) (*a*) covers four categories :

(*i*) acquisition by State of any estate ;
(*ii*) acquisition of any rights therein ;
(*iii*) extinguishment of rights ; and
(*iv*) modification of rights.

The four categories are different. Acquisition will result in all the rights being transferred to the State. Similarly, in the case of an extinguishment, if the result is that all the rights stand transferred to the State, it would fall within the expression 'acquisition'. At the same time, acquisition of any right in an estate may amount to modification since one of the rights of the owner has been acquired (*Ajit Singh* vs. *State of Punjab* - AIR 1967 SC 856). There is essential difference between "acquisition by the State" and "modification or extinguishment of rights". In the first case, the State is the beneficiary

while in the other it is not a beneficiary. The expression "acquisition by State of an estate" in the second proviso has the same meaning as in Clause (1) (*a*) to Article 31A.

PROVISOS

There are two provisos under this Article 31A. The **first proviso** says that the protection of Article 31A (1) shall not apply to a law made by a State Legislature unless it has been reserved for the President's consideration and has received his assent. The **second proviso** was inserted by the Seventh Amendment. It prescribes payment of compensation at the market value where cultivable land is acquired by the State provided such land is within the ceiling limit. The purpose of this proviso seems to be that a farmer who is cultivating land personally and within the ceiling limit should not be deprived of that property unless compensation at market rate is given (*Bhagat Ram* vs. *State of Punjab* AIR 1967 SC 927).

ESTATE

The term 'estate' is defined under Clause (2) of Article 31A.

It says :

(*a*) *the expression 'estate' shall in relation to any area have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include —*

(*i*) *any jagir, inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala any janmam right,*

(*ii*) *any land held under ryotwari settlement.*

(*iii*) *any land held or let for purposes of agriculture, or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites for buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans.*

This word 'estate' does not have a uniform meaning throughout the Country. Its connotation varies from place to place. Hence the word 'estate' would have same meaning as is given to it by a local law relating to land tenures. Jagir, Inam, Janmam are covered by this definition. Therefore, laws relating to agrarian reforms will cover all kinds of rights, quantitative and qualitative, in an area co-extensive with the estate or only a portion thereof (*Atma Ram* vs. *State of Punjab* - AIR 1959 SC 519).

SOME OF THE ENACTMENTS WHICH ARE PROTECTED BY ARTICLE 31A ARE GIVEN HEREUNDER :

Madras Leasehold (Abolition and Conversion into Ryotwari) Act, 1963, Assam State Acquisition of Zamindaries Act, 1951, Bombay Personal Inams Abolition Act, 1953, Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1989, Haryana Ceiling on Land Holdings Act, 1972, Orissa Land Reforms Act, 1960, Mysore Tenancy Act, 1952, Kerala Agrarian Relation Act, 1961.

ARTICLE 31B – VALIDATION OF CERTAIN ACTS AND REGULATIONS

Article 31B provides that *none of the Acts and Regulations specified in the Ninth Schedule to the Constitution, shall be deemed to be void on the ground that they are inconsistent with any of the rights conferred by the part III of the Constitution.* This Article was inserted by the Constitution (First Amendment) Act, 1951. This provision immunizes the various pieces of Legislations included in the Ninth Schedule from an attack on the ground of their non-conformity with any of the fundamental rights. No Act mentioned in the Ninth Schedule can be invalidated on the ground of its violation of any other fundamental right (*State of Bihar* vs. *Kameswar Singh* AIR 1952 SC 252).

The object and purpose of introducing Articles 31A and 31B was to protect agrarian reforms from invalidation. Article 31A saves laws enacted to implement the objects set out in Clause (*i*) thereof from attack under Articles 14 and 19. Article 31B protects Statutes included in the Ninth Schedule from any of the provisions of part III. A Statute which has been included in the Ninth Schedule and is also covered by Article 31A will thus be protected from any challenge that it violates the provisions of Part III. For Article 31B, there has to be a Constitutional Amendment to include a legislation in the Ninth Schedule.

The First Amendment which added the Ninth Schedule initially had 13 Acts mainly pertaining to land reforms. Subsequently and contrary to the earlier intention, several more Acts (not connected with agrarian reforms) were added from time to time.

In *Waman Rao* vs. *Union of India* (AIR 1981 SC 71), it has been held that the Amendments made to Acts which are already placed in the Ninth Schedule are not automatically immunised from legal challenge, and hence their validity can be challenged even after their inclusion in the Ninth Schedule, the

protection of Article 31B is only available to original Acts included in the Ninth Schedule. In *Prag Ice and Oil Mills* vs. *Union of India* (AIR 1978 SC 1296) it has been held that Orders and Notifications made under Acts included in the Ninth Schedule also are not entitled to protection of Article 31B as they are not the part of the original Acts.

The Constitution (Twenty Ninth Amendment) Act, 1972 added Kerala Land Reform Act, 1969 and Kerala Land Reforms Act, 1971, to the Ninth Schedule. The validity of this Amendment was upheld by the Supreme Court in *Kesavananda Bharati* vs. *State of Kerala* (AIR 1973 SC 1461). The Supreme Court held that all Acts and Regulations included in the Ninth Schedule prior to 24th April, 1973 (the date on which the Kesavananda Bharati judgment was delivered) will receive full protection of Article 31B. All Acts and Regulations which were added to the Ninth Schedule after this date will be valid only if they do not damage or destroy the basic structure of the Constitution (*Waman Rao* vs. *Union of India* AIR 1981 SC 271.)

While Article 31A protects law of particular category only, Article 31B empowers Parliament to include such laws as it thinks fit (*Waman Rao* vs. *Union of India* – AIR 1981 SC 271). This view virtually enables Parliament to pass any law and include it in the Ninth Schedule and completely insulate that enactment from judicial review on the ground that it violates the fundamental rights contained in part III. Justice P.N. Bhagwati rightly pointed out in the minority decision in *Minerva Mills* case, that Articles 31A and 31B were introduced to give protection to Land Reform and Zamindari abolition Legislation. The Ninth Schedule was not intended to include any other laws other than those covered by Article 31A. He also criticised the including all kinds of Statutes which have nothing to do with agrarian Reforms or Directive Principles.

Originally there were only thirteen Acts included in the Ninth Schedule. Now the Ninth Schedule contains two hundred and eighty four items. Many Acts which are not connected with agrarian reforms are now included in the Ninth Schedule. This is clearly misuse of the Ninth Schedule for political purpose and unjustifiable technique of Constitutional Amendment because even an Act declared unconstitutional is revived by inclusion in the Ninth Schedule.

Although an enactment which is included in the Ninth Schedule gets the protection of Article 31B, the Amendments made to such an Act will not automatically receive such protection if it is made after the Parent Act was included in the Ninth Schedule.

SOME OF THE TAMIL NADU ACTS WHICH ARE INCLUDED IN THE NINTH SCHEDULE AND PROTECTED BY ARTICLE 31B ARE :

1. The Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948.
2. The Madras Cultivating Tenants Protection Act, 1955.
3. The Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956.
4. The Madras Occupants of Kudiyiruppu (Protection from Eviction) Act, 1961.
5. The Madras Public Trusts (Regulations of Administration of Agricultural Lands) Act, 1961.
6. The Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961.
7. The Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969.
8. The Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act, 1970.
9. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1971, 1972, 1974, 1975, 1978, 1979, 1980, 1981, 1983, 1986, 1987, 1988.
10. The Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments or posts in the services under the State) Act, 1993.

ARTICLE 31C – SAVING OF LAWS GIVING EFFECT TO CERTAIN DIRECTIVE PRINCIPLES

This Article was inserted by the Constitution (25th Amendment) Act, 1971. It facilitates Parliament as well as State Legislatures to enact laws towards securing the Directive Principles specified in Article 31 (*b*) and (*c*) of the Constitution. Such laws cannot be challenged on the ground that they infringe Articles 14 and 19 of the Constitution. Article 31C gives the Directive Principles in Article 39 (*b*) and (*c*) primacy over the fundamental rights guaranteed by Articles 14 and 19 of the Constitution.

History

As it originally stood (*i*) it shielded from challenge on the ground of violation of Articles 14, 19 and 31 any law enacted for implementing the Directives in Clauses (*b*) and (*c*) of Article 39; and (*ii*) further provided that

the declaration in such law that it was enacted for the purpose of giving effect to the policy under Article 39 (*b*) and (*c*) would not open to judicial review. This second part was struck down as offending against the basic structure in the *Kesavananda Bharati* vs. *State of Kerala* (AIR 1973 SC 1491) but the rest of the Article was held valid. As a sequel to the Supreme Court decision in Kesavananda Bharati's case, the Parliament amended the Article by the 42nd Amendment Act, 1976, by which the protection of Article 31C was extended to all the Directives contained in Part IV of the Constitution in place of Article 39 (*b*) and (*c*) only. A formal change was also made by omitting reference to Article 31, since that Article was deleted by the same Amendment Act.

The object of the Constitution (42nd Amendment) Act, 1976 has been frustrated by the majority decision of the Supreme Court in the case of *Minerva Mills Limited* vs. *Union of India* (AIR 1980 SC 1789), holding that the extension of the shield of Article 31C to all the Directives was beyond the amending power of Parliament under Article 368, because it gave primacy to the Directives over the Fundamental Rights and also because it destroyed the basic structure of the Constitution, namely judicial review, because the 42nd Amendment totally excluded judicial review of a law implementing a Directive on the ground that it offended against Articles 14 or 19. The result is to restore Article 31C to its pre-1976 position namely to protect only laws which seek to implement Article 39 (*b*) and (*c*) subject to judicial review as held in Kesavananda Bharati's case.

As said earlier the second part of Article 31C was held to be unconstitutional in *Kesavananda Bharati* vs. *State of Kerala* (AIR 1973 SC 1491). This second part is "*and no law containing a declaration that it is for giving effect to such policy be called in question in any count on the ground that it does not give effect to such policy*". But these words continue to remain on the text of the Constitution, because these words have to be deleted only by another amendment of the Constitution which is yet to be done.

In *Waman Rao* vs. *Union of India* (AIR 1981 SC 271) the validity of Articles 31A, 31B, 31C and Schedule Nine were challenged on the ground that they were beyond the constituent power of Parliament as they damaged the basic structure of the Constitution. With respect to Article 31B, the Supreme Court, has held that all the amendments to the Constitution made prior to the decision in Kesavananda Bharati by which the Ninth Schedule was amended and several Acts and Regulations were included were valid but amendment made on or after 24th April, 1973 (the day on which the judgment was delivered) in the Ninth Schedule are open to challenge on the ground that

they are beyond the amending power of Parliament since they damage the basic structure of the Constitution. Regarding Article 31C it was held that this Article as it stood prior to the Forty Second Amendment, does not damage any of the basic or essential features of the Constitution and is therefore valid. The unamended portion of Article 31C gives protection to a defined and limited categories of laws for giving effect to the principles specified in Clauses (*b*) and (*c*) of the Article 39. It is impossible to conceive that any law passed for such a purpose can at all violate Article 14 or Article 19. Chandrachud J in fact declared that it will fortify that structure.

The Supreme Court in *Minerva Mills Limited* vs. *Union of India* AIR 1980 SC 1789 struck down Article 31C as amended by Section 4 of the Forty Second Amendment as unconstitutional on the ground that it destroys the basic feature of the Constitution. The harmony and balance between Fundamental Rights and Directive Principles is an essential feature of the Constitution. The Directive Principles prescribe the goal to be attained and the Fundamental Rights lay down the means by which the goal is to be achieved. The goal set out in Part IV have to be achieved without abrogating the means provided for by Part III. Thus there is no conflict between the Directive Principles and the Fundamental Rights. These are meant to supplement one another. The Supreme Court held that Article 31C as originally introduced by the Twenty fifth Amendment was Constitutionally valid but not the changes introduced by the Forty second Amendment. However the Supreme Court in *Sanjeev Coke Manufacturing Co.* vs. *Bharat Coking Coal Limited* (1983) (SCC 14) has expressed doubts on the validity of the decision in *Minerva Mills* case and it held that the question of the Constitutional validity of Article 31C appears to be concluded by the decision in *Kesavananda Bharati's* case. But this view appears to be incorrect.

The Article 31C would make possible the nationalisation or the taking over of public management and control of all means of production, key industries, mines, minerals, public supplies, utilities and services (*State of Tamil Nadu* vs. *Abu Kavur Bai* (AIR 1984 SC 326). Nationalisation laws have invariably been held to be valid under Article 31C. In *State of Tamil Nadu* vs. *Abu Kavur Bai* (AIR 1984 SC 326) the Tamil Nadu Stage Carriers and Contract Carriages (Acquisition) Act, 1973, nationalising transport service was held valid as there was nexus between the Act and Articles 31 (*a*) and (*c*). Similarly nationalisation of Textile undertakings was held as valid.

Once the law is protected under Article 31C, for giving effect to the principles laid down under Article 39 (*b*) and (*c*) there is no question of going

into the adequacy of compensation. It is sufficient for the State to prove that compensation was reasonable and not monstrous or illusory so as to shock the conscience of the Court (*State of Tamil Nadu* vs. *Abu Kavur Bai* AIR 1984 SC 326.)

The following Acts have been held to be covered by Article 31 C :

1. The Essential Commodities Act, 1955 ;
2. Coking Coal Mines (Nationalisation) Act, 1972 ;
3. The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holding Act, 1973 (fixing ceiling on agricultural land holdings and providing for acquisition of land for distribution amongst landless people of land held in excess of the ceiling by an individual or family) ;
4. The Act providing protection of Tenants from eviction on payment of part only of arrears of rent ;
5. The taking of sick industries in order to augment production and distribution of commodities at fair price, to the general public.

ARTICLE 300A - RIGHT TO PROPERTY

The Chapter IV of Part XII of the Constitution consists of only one Article. This Article namely Article 300A deals with the right to property. Now right to property is no more a fundamental right. The Article 31 was deleted by Forty Fourth Constitutional Amendment in 1978 and it has no place in Part III of the Constitution. Hence a person whose property is deprived cannot invoke Article 32 which is available only for violation of Fundamental Rights. He has to invoke Article 226 or file a suit or adhere to any other Statutory remedy if available. The right to property is therefore now regulated by ordinary law.

Article 300A says : *No person shall be deprived of his property save by authority of law.* The deprivation of property may take place in various ways, such as destruction or confiscation or revocation or seizure or assumption of control of a business etc. This deprivation of property must be only by authority of law and not by an executive action. By "authority of law" means by or under a law made by the competent Legislature.

The right to property did not pertain to the basic structure of the Constitution. This view was subsequently reiterated in a few cases which have been set out in *Jilubhai Nanbhai Khachar* vs. *State of Gujarat* 1955 Supp. (1) SCC 596.

PROPERTY

The word property should be given a liberal meaning and should be extended to all those well recognised types of interest which have the insignia or characteristic of property right. The word 'Property' connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible, invisible, real or personal ; everything that has an exchangeable value or which goes to make up wealth or estate or status. The right to possession is a property within the meaning of Article 300A and no longer treated as bounty. The right to receive compensation of acquisition of lands under Land Acquisition Act, 1894 is a property. The term Property includes money, contract, interest in property, right of pre-emption, anything acquired by inheritance, rental income due from a tenant, cash grants, patents, copyrights so on.

COMPENSATION

The Court held in *Jilubhai's* case, that where property is acquired to implement the Directive Principles of State policy, the compensation need not be a just equivalent. The amount determined must not be illusory and the adequacy of the resultant amount cannot be questioned in a Court of law. But compensation based on irrelevant principles will be subject to judicial review (*Jilubhai Nanbhai Khachar* vs. *State of Gujarat* (1995 Supp. (1) SCC 596. The taking of one's property must be for a public purpose only. *Primafacie,* it is the State which would be the judge to decide whether a purpose is a public purpose, although this is subject to judicial review. Public interest has always been considered to be an essential ingredient of public purpose.

CHAPTER III

THE TAMILNADU CULTIVATING TENANTS PROTECTION ACT, 1955

Soon after Independence attained it was felt that the reform of land system is urgently needed in order to improve the standard of living conditions of tiller of the land. The agrarian reforms to be taken must be in consonance with the Directive Principles of State Policy enshrined in the Constitution of India. So, Government passed a number of enactments in that direction. The elimination of intermediaries in agricultural holdings, conversion of agricultural holdings, conversion of agricultural lands into Ryotwari, land to the tiller, fixing of tenure, protection of tenancy and protection of kudiyiruppu are some of the objects taken into consideration in bringing the land reforms in Tamil Nadu.

The first enactment passed in that direction was the Thanjavur Pannaiyal Protection Act, 1952. Then next step taken by the Government for the protection of cultivating tenants is passing of the Tamil Nadu Cultivating Tenants Protection Act, 1955. The scope of this Act of 1955 is to protect the cultivating tenants from improper eviction by land owners.

Originally the Act was intended only for one year. This Act was extended from time to time and it became permanent by virtue of the Act 8 of 1965. Thereafter many amendments were made to the Principal Act. They introduced drastic changes and several new provisions have been incorporated in the Principal Act. The Act has been made applicable to the whole of Tamil Nadu by Act 4 of 1976. This beneficial enactment is a small one, consisting of eight sections only.

SALIENT FEATURES OF THE ACT

The Tamil Nadu Cultivating Tenants Protection Act is a beneficient legislation for granting security of tenure to cultivating tenants of agricultural lands. The salient features are :

1. The first and foremost feature of the Act is that the cultivating tenants can be evicted from the leasehold only by an order of Revenue Court constituted under the Act and that too only under certain specific circumstances such as failure to pay rent, causing damage or injury to the land, using the land for any purpose other than agricultural or horticultural purposes, so on.

2. This Act has provided a provision for restoration of possession under Section 4.

3. The landlord is entitled to carry on personal cultivation under certain circumstances subject to certain conditions.

4. The cultivating tenant can also deposit rent due to the landowner in the Revenue Court and thereby avoid the risk of becoming defaulters in case the landowners avoid or refuse to accept the rent offered. [Section 3(3a)].

5. A special privilege is conferred on the cultivating tenant who has enrolled as a member of Armed Forces who sub-let the land and to resume possession of the land, sub-let by him after his retirement, discharge etc — Section 4 AA. So also a landlord is entitled to resume possession for personal cultivation subject to certain conditions after his retirement or discharge from the service.

6. A provision has been made that even sub-tenants are eligible for the protection given to the tenants, irrespective of the fact that the lease in favour of the original tenant has come to an end.

7. Under Section 4B of the Act, the lease deed must be executed in triplicate in the prescribed form and within reasonable time.

8. The jurisdiction of civil Court is ousted in respect of any matter which the Revenue Divisional Officer is empowered by or under this Act to determine. [Section 6].

9. This Act has no application to the lands owned by Central and State Governments.

WHO IS A CULTIVATING TENANT ?

Now we will consider the definition of the expression *'cultivating tenant'*. This is defined under Section 2(*aa*) as follows :

'CULTIVATING TENANT'

(*i*) means a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied, and

(*ii*) includes —

(*a*) any such person who continues in possession of the lands after determination of the tenancy agreement;

(*b*) the heir of such person, if the heir contributes his own physical labour or that of the member of his family in the cultivation of such land ;

(*c*) a sub-tenant if he contributes his own physical labour or that of any member of his family in the cultivation of such land ; or

(*d*) any such sub-tenant who continues in possession of the land not withstanding that the person who sub-let the land to such sub-tenant ceases to have the right to possession of such land ; but

(*iii*) does not include a mere intermediary or his heir.

This definition includes apart from cultivating tenant, his heir, his family members and sub-tenant. There should have been in the origin, a tenancy agreement, express or implied and under that agreement to which the person is a party, should carry a personal cultivation on the land. If these premises are granted, though the agreement of tenancy express or implied was terminated but the person mentioned in the first part of the definition continues in possession of the land, he will be a cultivating tenant. The first part of the definition does not specify as between whom and whom the tenancy agreement mentioned is contemplated. The lease may have been granted by the owner or a usufructuary mortgagee or even a lessee of the land. But the person who carries a personal cultivation of the land should derive his right under the tenancy agreement with a person who is entitled to enter into the agreement. To attract the inclusive definition, the two requisites are,

(1) determination of a tenancy agreement ; and (2) the person who continues in possession of the land. If these conditions are satisfied, the person continuing in possession of the land will be a cultivating tenant.

LAND-LORD

A landlord is defined as follows. "Landlord means the person entitled to evict the cultivating tenant from such holding or part." [Section 2(e)] So this

definition will include every successive holder who could be entitled to evict a tenant. There is nothing in the Act to show that the protection is given to the cultivating tenant only against the original lessor and did not extend to subsequent holders of land occupying the capacity of the landlord (*G. Ponnaiah Thevar* vs *Nalleyam Perumal Pillai* AIR 1977 SC 244).

A tenant of a usufructuary mortgagee with whom the tenancy agreement came to an end would be entitled to statutory protection under the Act, if he continues to be in possession and cultivates the land. (*Chandrasekaran* vs *Kunju Vanniar*, AIR 1975, Mad 227 FB).

A legal representative is also entitled to be included in the definition provided if he satisfies the condition that he personally contributes his labour in the cultivation of such land (*Rasappa Goundar* vs *G.N.Ramasamy* AIR 1975 Mad 386 and *Venkataswami Reddiar* vs *Sundaramurthy* AIR 1972 Mad 171).

If the sub-lessee continues in possession but the tenancy agreement originally entered into had not terminated, the sub-lessee may not be entitled to protection. If, in the other hand, by the time the sub-lessee claims protection under the Act, the tenancy agreement with his lessor had terminated, then it will be different matter to which the definition will have application (*Chandrasekaran* vs *Kunju Vanniar* 1975 Mad 227 FB). It is pointed out in *Sudalai Muthu* vs *Palaniyandavar* AIR 1966 SC 469 that in the case of a joint family, if one of the members of a joint family contributes his labour that would suffice to hold that the family is entitled to the protection under the Act.

PROTECTION OF CULTIVATING TENANTS AGAINST EVICTION

The Section 3 of the Tamil Nadu Cultivating Tenants Protection Act, 1955 deals with protection of cultivating tenants against eviction by landlords. This Section consists of four clauses. The sub-section 1 offers protection to the cultivating tenants. The sub-section 2 speaks about the exceptions. The sub-section 3 is relating to the deposit of rent by the cultivating tenants and sub- section 4 is regarding the eviction procedure taken by the landlord.

Sub-section 1 of the Section 3 says : *"no cultivating tenant shall be evicted from his holding or any part thereof, by or at the instance of his landlord, whether in execution of a decree or order of a court or otherwise".*

For the purpose of getting protection under this Section the applicant must be a cultivating tenant as defined under Section 2(*aa*). It is clear from

this, that the cultivating tenant is a person who contributes his own physical labour in the cultivation of any land belonging to another, under a tenancy agreement express or implied. What is necessary is that there must be a tenancy agreement between the two and the person claims protection should carry a personal cultivation on the land. In the case of a joint family, if one of the members of a joint family contributes his labour that would suffice to hold that the family is entitled to the protection under the Act (*Sudalaimuthu* vs *Palaniyandavar* AIR 1966 SC 469). On the death of the cultivating tenant, his legal representatives would be entitled to claim the protection of the Act if any one of them satisfied that he had personally contributed his labour in the cultivation of such land (*Rasappa Gounder* vs *G.N.Ramasamy* AIR Madras 386). So also a tenant of a usufructuary mortgagee with whom the tenancy agreement came to an end would be entitled to statutory protection under this Act, if he continues to be in possession and cultivate land (*Chandrasekaran* vs *Kunju Vanniar* AIR 1975 Madras 227 FB). The contribution of one's physical labour in the cultivation and existing of tenancy agreement are necessary to claim protection. In other words in order to claim the benefits of the Act, (1) one should contribute his own physical labour, (2) The land should belong to another person, (3) There must be a tenancy agreement express or implied. We must remember that a landlord is defined here not in terms of a person who let out the land, but as a person entitled to evict the cultivating tenant. So no contractual relationship is necessary or is implied for the purpose of the definition. The lease may have been granted by the owner or a usufructuary mortgagee or even a lessee of the land. A sub-tenant is a cultivating tenant. Any such sub-tenant is a cultivating tenant. Any such sub-tenant who continues in possession of the land not withstanding that the person who sub-let the land to such sub-tenant ceases to have the right to possession of such land is entitled to protection. One can get protection even after the determination of tenancy agreement provided he is in possession of the lands.

According to sub-section 1 of the Section 3, the landlord cannot evict the tenant even though he obtained a decree earlier. He should present an application to the Revenue Divisional Officer under sub-section 4(a) for this purpose.

Sub-section 2 is an exception to sub-section 1. On account of failure to pay rent within the stipulated time, causing damage or injury to the land, using the land for any purpose other than agricultural or horticultural purposes and wilful denial of the title of the landlord, he cannot get protection from eviction. Let us consider these circumstances in detail.

THE GROUNDS OF EVICTION

FAILURE TO PAY THE RENT :— The first ground is non-payment of rent within stipulated time as prescribed by the Act. There are two provisions with respect to failure to pay rent: (*a*) They are the areas governed by the provisions of the Thanjavur Tenants and Pannaiyal Protection Act, 1952 was in force, (*b*) the areas where the Thanjavur Tenants and Pannaiyal Protection Act is not in force. In the both cases where a tenant remain in areas before or after the commencement of this Act and failed to pay the arrears, he cannot avail the protection given to the tenants. Likewise, where he failed to pay the rent accrued due after the commencement of the Act, within one month, he cannot avail the benefits of the Act.

INJURY TO THE LAND : The second ground is causing damage or injury to the land or crop either by his act or by negligence. So also if he failed to cultivate the land, he cannot get protection. It is pointed out in *Rethinam* vs *Kuppusamy Odayar* (AIR 1981 Madras 170) the value of the land would be adversely affected if only a single crop is cultivated in double crop field.

USING THE LAND FOR OTHER PURPOSES : The Act gives protection only where the tenant carries a personal cultivation of the land for agricultural purposes. '*Cultivation*' means according to Section.2(*b*), the use of lands for the purpose of agriculture or horticulture. Further when we look at the meaning of the term 'land', it is defined as the land used for the purpose of agriculture or horticulture under Section 2(*d*). So it is clear that where he used the land for any purpose other than agricultural or horticultural purpose, the sub-section will not apply.

DENIAL OF TITLE : Next ground is wilful denial of landlord's title. Having accepted a person as landlord the tenant cannot thereafter deny his title. The estoppel will operate against him. This is similar to ground for the forfeiture of lease under Section 111(*g*) of the Transfer of Property Act. However, a denial of the landlord's title under a *bona fide* mistake of fact is not wilful within the meaning of this clause.

So in the four circumstances mentioned above, the cultivating tenant is not entitled to avail the protection given under Section 3(1) of the Act. That means in those circumstances, the landlord can approach the Revenue Divisional Officer for his eviction. [Section 3(4)(*a*)].

DEPOSIT OF THE RENT

A provision is made under Section 3(3*a*) for the deposit of rent due to the landlord in order to avoid the risk of becoming defaulters in case the landowners

avoid or refuse to accept the rent offered. If the rent is payable in kind, its market value on the date of deposit may be made in the Revenue Court to the account of landlord. The Court will conduct summary enquiry and find out correctness of the rent deposited. If the Court finds that any further sum is due, it will allow the cultivating tenant time for depositing the rent. If the Court adjudges that no further sum is due or if the cultivating tenant deposit the rent within the time allowed, the cultivating tenant shall be deemed to have paid the rent. Then he is entitled to the benefits of protection against eviction. On the other hand, if the tenant failed to pay the rent within the time allowed by the Court, the landlord may evict him as provided in sub-section (4).

EVICTION OF CULTIVATING TENANT BY THE LANDLORD

On the grounds mentioned under Section 3(2) the landlord, may make an application to the Revenue Divisional Officer for evicting the cultivating tenant [Section 3(4*a*)]. The reasons are as we seen earlier, (*a*) failure to pay rent within the time prescribed by the Act, (*b*)causing damage or injury to land or crop, (*c*) using the land for any purpose other than agricultural or horticultural purpose and (*d*) denial of landlord's title.

On receipt of such application, the Revenue Divisional Officer, will either allow the application of the landlord or to dismiss it after he has held a summary enquiry into the matter. If the application is allowed an order of eviction has to be passed. If it is dismissed the proceedings again come to an end. However, if the ground of eviction is non-payment of rent, the Revenue Divisional Officer is clothed with power to allow the cultivating tenant to deposit the arrears and costs as directed. The power is discretionary and while exercising the same it is not incumbent on the Revenue Divisional Officer to grant time. If the cultivating tenant does not comply with the order, he may pass an order of eviction.

The Revenue Divisional Officer cannot direct the cultivating tenant to deposit such arrears of rent as have become time barred under the law of limitation. Similarly, he has no power to remit the rent due by a tenant on the ground of failure of crop [*Ramasamy Gounder* vs *Perianna Moopan* (1959) 1 MLJ 122]

RIGHT TO RESTORATION OF POSSESSION

Under Section 4 of the Act, a cultivating tenant who was in possession of any land on the first December 1953 and who is not in possession thereof at the time of the commencement of this Act is by an application to the Revenue Divisional Officer entitled to be restored to such possession.

WHEN THE CULTIVATING TENANT IS NOT ENTITLED TO RESTORATION OF POSSESSION?

Section 4(2) says that under the following circumstances, the cultivating tenant is not entitled to restoration of possession.

(1) If he is in possession when the Act came into force, either as owner or as tenant or as both, of land exceeding the extent specified in the explanation or if had been assessed to any sales tax or profession tax or income tax during 1953-54 or 1954-55. or

(2) if the landlord after evicting such cultivating tenant from the land has been carrying on personal cultivation on the land, provided that (*i*) the total extent of land held by the landlord does not exceed the extent specified in the explanation, and (*ii*) the landlord has not been assessed to any Sales Tax, Profession Tax or Income Tax during 1953-54 or 1954-55. or

(3) where the landlord has *bonafide* admitted some other cultivating tenant subsequent to Ist December 1953 to the possession of land and such tenant had cultivated the land before the commencement of the Act. Provided that where such other tenant is in possession, either as owner or as tenant or as both of any other land which exceeds the extent specified in the explanation and the cultivating tenant who was evicted is not in possession of any land or is in possession of any other land which is less than the extent specified in the explanation, the cultivating tenant is entitled to restoration of possession.

SPECIAL PRIVILEGES FOR MEMBER OF THE ARMED FORCES

Newly introduced Section 4AA, confers special privileges for the member of the Armed Forces whether he is tenant or landlord. There are three aspects with respect to conferment of this privilege on the member of the Armed Forces. The benefit is conferred firstly on the cultivating tenant to sub-let the lands under sub-section 1. Secondly, it is conferred on cultivating tenant to resume possession after his retirement under sub-section 2. Thirdly, it is conferred on a landlord to resume possession for personal cultivation after his discharge or retirement under sub- section 3. This may be elaborated as follows:

(1) The cultivating tenant who is enrolled as a member of the Armed Forces may on or after such enrolment sub-let the lands held by him.

(2) A cultivating tenant who is enrolled as a member of the Armed Forces on discharge or retirement from service or on being sent to Reserve is

entitled to resume the possession of the land sub-let by him as under sub-section 1.

(3) A landlord who is enrolled as a member of the Armed Forces on discharge or retirement from service or on being sent to Reserve, is entitled to resume possession from the cultivating tenant for personal cultivation provided total extent of land held by him does not exceed prescribed ceiling limit.

In short a tenant can sub-let the land after his enrolment and the tenant and landlord can resume possession after their retirement or discharge.

For the purpose of claiming benefits under Section 4AA, the applicant in case he is landlord under sub-section (3), must be a landlord before he is enrolled as a member of the Armed Forces to get resumption. The same principle will apply to the cultivating tenant also where he is an applicant. A landlord who opts to serve the Armed Forces is given a special privilege to get his land resumed on his discharge or retirement from service subject to the ceiling area of the land. In short, it is in the nature of the restitution, since the landlord who would otherwise enjoy the benefit of personal cultivation gets it suspended in order to serve the Country in the Armed Forces.

Sub-section 4(*a*) lays down the procedure for resuming the possession of the land. Any person desiring to resume any land should apply for it to the Revenue Divisional Officer. The concerned officer after holding summary enquiry will pass the necessary order. The Revenue Divisional Officer has a discretionary power in asking the applicant to reimburse the possessor in respect of expenses or labour contributed by him on any crop which has not been harvested. So also he may postpone the restoration until any crop which is being grown thereon has been harvested.

The special privilege conferred on the member of the Armed Forces is also available to his widow or his dependant in case he dies while in service.

EXECUTION OF TENANCY AGREEMENT

Section 4B of the Tamil Nadu Cultivating Tenants Protection Act, 1955 insists that the lease deed must be in triplicate. This Section was inserted in the year 1956. According to this Section, every tenancy agreement entered into between a cultivating tenant and a landlord, a lease deed should be executed in triplicate in the prescribed form within a reasonable time after the commencement of such tenancy. It should contain the following particulars : name and description of cultivating tenant, survey number, description and extent of the land leased out and terms of tenancy. It should be signed by

both parties. One of the three copies will be kept by the landlord, one will be kept by the cultivating tenant and third will be caused to be lodged in the Taluk Office by the landlord within a fortnight.

In case either party to the agreement refuses or delays unreasonably, the other party may lodge the deed in the Taluk Office. The Revenue Divisional Officer is entitled to impose a penalty on the defaulting party.

BAR OF JURISDICTION OF CIVIL COURTS

As in the case of other tenancy enactments, in this Act also, the jurisdiction of the civil Courts is ousted. Section 6 of the Tamil Nadu Cultivating Tenants Protection Act, 1955 says that the civil court [except to the extent specified in Section 3(3)] has no jurisdiction in respect of any matter which the Revenue Divisional Officer is empowered by or under this Act to determine. The civil court has no power to grant any injunction in respect of any action taken or to be taken by the Revenue Divisional Officer. The Section 3(3) referred above is relating to the deposit of rent in the court when the landlord avoid or refuse to receive the rent.

TRANSFER OF SUITS TO THE REVENUE DIVISIONAL OFFICER BY CIVIL COURT

In any suit before any civil Court for possession, if the defendant proves not only that he is a cultivating tenant but also he is entitled to the benefits of the Act, the civil Court is bound to transfer it to the Revenue Divisional Officer and cannot proceed to try and dispose of it itself.

REVISION BY HIGH COURT

Section 6 B of the Tamil Nadu Cultivating Tenants Protection Act, 1955 speaks about the power of revision by the High Court. It says that the Revenue Divisional Officer's Court is subordinate to the High Court for the purpose of Section 115 of the Code of Civil Procedure, 1908 and his order shall be liable to revision by the High Court under the provisions of the Section. In a case, for eviction for non-payment of rent, a preliminary order was passed by the Revenue Court directing the tenant to deposit a certain sum together with costs on or before the date specified. On the adjourned date, the tenant was absent and no payment or deposit was made. Then Revenue Court passed order evicting from the land. In the revision petition, the tenant contended that the Revenue Court has failed to exercise its judicial discretion to grant

further time for payment of arrears and denial of a further chance makes the order in question revisable under Section 6B. **Held,** that the *exparte* order becomes liable to be set aside by the revisional court and order becomes revisable on the ground that a reasonable opportunity should be given to the tenant for putting forth his case. The Revenue Court had to take the matter afresh on file and deal with the matter on merits allowing both sides to adduce evidence both oral and documentary (*P. Silamban* vs *G.Ramamurthy Iyer* AIR 1983 Madras 258).

EXCEPTION TO THE LANDS OWNED BY GOVERNMENT

Section 8 of the Tamil Nadu Cultivating Tenants Protection Act, 1955, exempts the lands owned or taken lease by Central, State Governments, Local Authorities and Universities from its operations.

(2) THE TAMILNADU CULTIVATING TENANTS (PROTECTION FROM EVICTION) ACT,1966

There was an unprecedented drought during 1965 and the cultivating tenants were not able to pay the rent due to landowners. Therefore, the Tamil Nadu Cultivating Tenants (Protection from Eviction) Act, 1966 (Tamil Nadu Act 11/1966) was enacted to provide for protection from eviction of cultivating tenants who were in arrears of rent payable to the landlords on account of failure of crops due to the unprecedented drought in 1965. This Act was in force for a period of two years from 20th April 1966 to 19th April 1968.(Tamil Nadu State Administration Report 1972-1973 P.118).

(3) THE TAMIL NADU CULTIVATING TENANTS (SPECIAL PROVISIONS) ACT, 1968 (Tamil Nadu Act 16 of 1968).

As it was felt that it would be difficult for the cultivating tenants to pay in one lump sum the entire arrears of the rent outstanding on the 20th April 1968 after the lapse of Tamil Nadu Act.11/1966, another Act called, the Tamil Nadu Cultivating Tenants (Special Provisions) Act, 1968 (Tamil Nadu Act 16/1968) was enacted to provide for the payment of arrears of rent accrued and due to the landlord and outstanding on the 20th April 1968 in four equal annual instalments on or before 1st April 1969, 1st April 1970, 1st April 1971 and 1st April 1972 along with current dues.(Tamil Nadu State Administration Report 1972-1973 P.118). Or in other words, with a view to extend the life of the Tamil Nadu Cultivating Tenants (Protection from Eviction) Act, 1966 (Tamil Nadu Act 11/1966) intending to give protection to the cultivating

tenants from eviction the Tamil Nadu Cultivating Tenants (Special Provisions) Act, 1968 was enacted with effect from 20th April 1968. It has been laid down in the Act that any cultivating tenant is entitled to pay the total amount of arrears of rent, which accrued to a landlord and outstanding on the 30th day of April 1968, in four equal annual instalments without interest on or before the 1st April of each of the four years following the 20th April 1968.

This is an Act to make special provisions in respect of certain arrears of rent payable by cultivating tenants. By the Tamil Nadu Cultivating Tenants (Protection from Eviction) Act 1966, the cultivating tenants were given protection from eviction on the ground of arrears of rent. After the expiration of the said Act, it will be difficult for the cultivating tenants to pay in one lumpsum, the entire arrears outstanding on the 20th April, 1968. Then the Tamil Nadu Government came forward to rescue the cultivating tenants to pay such arrears in easy instalments. So, this Tamil Nadu Cultivating Tenants (Special Provisions) Act, 1968 is passed.

Section 3 protects the cultivating tenant from eviction on the ground of arrears of rent for the period prior to 20th April 1968. Like the Tamil Nadu Cultivating Tenants (Protection and Payment of Fair Rent Amendment) Ordinance 1958, which protects the Kaiaeruvaramdars and Mattuvaramdars in the Tiruchirapalli district from eviction, the Special Provisions Act, 1968 protects specifically from the eviction of a cultivating Verumpattamdar from his holding on the ground that he is in arrears of rent which accrued due to the landlord before and is outstanding on the 20th April 1968. By the help of this Act, he can pay the arrears of rent in four equal instalments. Failing which he will be evicted according to the procedure established by law under this Act.

(4) (1) THE TAMIL NADU CULTIVATING TENANTS ARREARS OF RENT (RELIEF) ACT, 1972
(Tamil Nadu Act 21 of 1972)

It was found, that many tenants were unable to pay the arrears of rent within the time given by Tamil Nadu Act 16/1968 due to their indebtedness and poor economic condition. Therefore, to provide rent relief to cultivating tenants, the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1972 (Tamil Nadu Act 21/1972) was enacted for the wiping out of old arrears of rent due for the period upto 30th June 1971; if the cultivating tenants paid the rent due for the fasli year commencing on 1st July 1971 and ending with 30th June 1972 within a period of six months from the date of publication of the Act in the Tamil Nadu Government *Gazette*. This Act was published on the

11th August 1972 and the time allowed had expired on 10th February 1973.(Tamil Nadu State Administration Report 1972-1973 P.119)

The earlier enactments referred to above excepting the Tamil Nadu Cultivating Tenants Protection Act, 1955 and the Tamil Nadu Cultivating Tenants Payment of Fair Rent 1956, are of a general nature relating to the landlord and tenant and are enacted for a limited purpose.

In 1972, this Act has been passed to provide relief to cultivating tenants in respect of certain arrears of rent. It has been represented to the Tamil Nadu Government that the cultivating tenants have borrowed or added to their debts during the years of drought and that they are not in a position to pay arrears of rent due to their indebtedness and poor economic conditions. Since, the tenants fail to clear the arrears of rent, landowners have taken action against cultivating tenants for eviction and for recovery of arrears of rent.

When the Tamil Nadu Government considered it necessary as part of agrarian reform to give relief to cultivating tenants from the burden of discharging arrears of rent, on condition of payment of current rent enacted this landmark Act. This Act removed the cultivating tenants' fear of eviction for arrears of rent. So, their occupancy right is secured. Sections 3 to 7 are to protect the interest of the poor peasants. This Act is a milestone in the achievement of protecting the cultivating tenants in Tamil Nadu.

After seven years, the same kind of rent relief was granted by the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1980 as amended and the Tamil Nadu Cyclone and Flood Affected Areas Cultivating Tenants Arrears of Rent (Relief) Act, 1980 as amended, permanent rent relief has been given to the cultivating tenants for payment of accumulated arrears of rent according to which the arrears of rent for Fasli 1381 and earlier Fasli 1382 and on fifth of the arrears of rent for Fasli 1383 to 1387 in the cyclone and flood affected areas are to be paid in three instalments *viz.* 30th June 1989, 31st March 1981 and 30th June 1982. For the areas not affected by cyclone and flood that occurred in 1977, the arrears of rent for Fasli 1381 and earlier 1382 and one third of arrears of rent for Fasli 1383 to 1385 are to be paid in three instalments *viz.*30th June 1981, 31st March, 1982 and 30th June 1982.(Tamil Nadu State Administration Report 1972-1973 P.119)

In the wake of widespread drought in Tamil Nadu and in the interest of the general public that at the present time agriculturists should be spread off the distractors and expenditure involves in litigation launched by creditors and in order that maximum possible advantages may result to the State in the matter

of production of food crops. The Tamil Nadu Indebted Agriculturists (Temporary Relief) Act, 1975 (Tamil Nadu Act 10 of 1975) enacted .

Section 3 speaks about the relief given to the cultivating tenant. It says :

"1 (*a*) All arrears of rent payable by a cultivating tenant to the landlord and outstanding on the 30th June 1971 (hereinafter referred as arrears of rent) should be deemed to be discharged whether are not a decree or order has been obtained, therefor, if such cultivating tenant —

(*i*) has before the date publication of this Act paid to the landlord or deposited in the court or before the competent authority to the accounts of the landlord or ;

(*ii*) pays or deposits in the manner specified in clause (*b*) within six months from the date of publication of this Act,or

(*iii*) is deemed to have paid or deposited under this Act,

the whole of the rent due for other fasli year commencing on the first July 1971, and ending with the thirtieth June 1972 (hereinafter referred to as the current year)".

Section 4 of the Act further says if any cultivating tenant makes any payment by way of rent or deposited by way of rent in the Court shall be deemed to have paid or deposited towards the current rent.

This Act specially lays emphasis that no suit for recovery of the debt shall be instituted and no application for the execution of a decree or payment of money passed in a suit for recovery of a debt.

(5) THE TAMIL NADU CULTIVATING TENANTS (PROTECTION FROM EVICTION) ACT, 1983. (Tamil Nadu Act 26 of 1983)

This Act was published in the *Tamil Nadu Government Gazette* on 2nd June 1983. This Act 26 of 1983 was passed in order to provide for the protection from eviction of cultivating tenants who are in arrears with respect to the rent payable to the landlords. Section 1(3) says "It shall be deemed to have come into force on the 1st day of July 1982 and shall remain in force upto and inclusive of the 15th day of January 1984.

Section 3 of the Act prohibits eviction of cultivating tenants on the ground of arrears. It says during continuance of this Act, (i) *no application shall be*

made by the landlords or Public Trusts for the eviction of Cultivating Tenants from his holding on the ground that he is in arrears of rent, (ii) *no cultivating tenant shall be evicted* by the landlord or Public Trusts in execution of a decree or order of a Court on the ground that he is in arrears.

Section 4 of the Act stays all applications pending before the RDO. Section 5 is relating to excluding the period of limitation prescribed for the suit for eviction. Section 7 provides the restoration of possession if he was evicted on or after 1.7.1982 but before 2.6.1983 on the ground of arrears of rent.

(6) THE TAMIL NADU CULTIVATING TENANTS (PROTECTION FROM EVICTION) ACT 1989 (Tamil Nadu Act 41 of 1989).

The object and provisions of this Act is similar to the Act passed earlier in 1983 (Act 26 of 1983). The date of publication was 24.11.89. This Act shall be deemed to have come into force on the 1st day of October 1986 and remain in force upto 31st March 1990.

The relief given to the cultivating tenants under the Tamil Nadu Cultivating Tenants(Protection from Eviction) Act, 1983 is further given upto 31st March 1990. Section 3 prohibits eviction of the tenant in furtherance of execution proceedings and filing of application for the eviction on the ground of non-payment of rent. Section 4 is relating to stay of proceedings application and proceedings in execution of decrees. Section 5 is relating to exclusion of time for limitation and Section 7 is for the restoration of possession to the tenants.

(7) THE TAMIL NADU CULTIVATING TENANTS ARREARS OF RENT (RELIEF) ACT, 1990. (Tamil Nadu Act 38/1990).

The time limit given under the Act, 41/89 expired by 31st March 1990. Owing to drought, three floods and seasonal fluctuations in the State, the tenants were not in a position to pay the rents due to the landowners/public trusts. It was felt that there was need to allow them time to rehabilitate themselves before they would be in a position to pay the arrears of rent. Since, large amount of arrears of rent has accumulated due to protection given to tenants over a long period of time, it will not be possible for the cultivating tenants to pay the arrears in a lumpsum and they were in danger of being evicted on a large scale. The Government have, therefore, enacted the

Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990 (Tamil Nadu Act 38 of 1990) which came into effect from 10th October 1990, for giving relief to the cultivating tenant, by discharging him from the payment of all arrears of rent payable to the landowner or the public trust for the fasli year ending with 30th June 1989 and for any previous fasli year and outstanding on the date of publication of the proposed Act.

For this purpose he was given two options . The options are :

(*i*) **to pay the *current rent* in full and *one fourth* of the said arrears of rent without interest or**

(*ii*) **to pay the *current rent* in full and *one third* of the said arrears without interest *in five equal annual instalments.***

Section 5 of the Act provides the relief for the payment of arrears of rent and also deals with **option I.** Sub-section (3) says "Any cultivating tenant may pay to the landlord or deposit to the court or before the competent authority to the account of the landlord the current rent and the one fourth of arrears of rent on or before the 31st day of March 1991."

"Any cultivating tenant may pay to the landlord or deposit in the Court or before the competent authority to the account of the landlord."

(*a*) the *current rent* on or before the 31st day of March 1991, and

(*b*) the *one third* of the arrears of rent in *five equal annual instalments* as specified below.

(*i*) the first instalment, on or before the 31st day of March 1991.

(*ii*) the second instalment, on or before the 31st day of March 1992.

(*iii*) the third instalment, on or before the 31st day of March 1993.

(*iv*) the fourth instalment, on or before the 31st day of March 1994 ; and

(*v*) the fifth instalment, on or before the 31st day of March 1995.

So, under this Act, the cultivating tenant has to choose any one of the options. In both the options the payment of current rent is compulsory. In the option I, he pays 8 of arrears of rent in lumpsum, in the **option II**, he pays 1/3 of arrears of rent in five equal annual instalments.

FORM – I

Every option for payment of arrears of rent must be given in writing by the cultivating tenant and it should be intimated to the Special Deputy Collector (Revenue Court) in **Form I** within two months from 10th October 1990. The Government subsequently extended the time limit by another two months from 10th December 1990 through the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Amendment Ordinance,1990 **(Tamil Nadu Ordinance No.10 of 1990) published in the Tamil Nadu Government *Gazette*, dated 9th December 1990.** The cultivating tenants were given time upto **9th February 1991** for filing their option. The option so exercised shall be final. The proceedings for the eviction of cultivating tenants for the recovery of arrears of rent were barred upto 31st March 1991.

FORM – II

Every deposit of current rent and arrears of rent under sub-section 2 of Section 5 or under sub-section (2) of Section 7 as the case may be made by the cultivating tenant in **Form II** and current rent and the arrears of rent must be deposited before the court within specified time. Under Section 13, any cultivating tenant, who had been evicted for the non- payment of rent on or after 1st April 1990, but before the date of publication of the Act, an application in **Form IV** within three months from the date of such publication *(i.e.)* 10th October 1990, he is entitled to be restored possession of such land and to hold it with all rights.

TABLE

S.No.	Name of the enactment	Object	Date of Publication	Remarks
1.	The Tamil Nadu Cultivating Tenants Protection Act, 1955	To protect cultivating Tenants	27.9.55	Principal Enactment (Permanent)
2.	The Tamil Nadu Cultivating Tenants (Protection from Eviction) Act, 1966	To protect from eviction on the ground of arrears of rent on account of failure of crops in 1965	—	20.4.66 to 19.4.68
3.	The Tamil Nadu Cultivating Tenants (Special Provisions) Act, 1968	To protect from eviction on the ground of arrears of rent accrued till 20th April 1968	26.9.68	Repealed by Act of 1972
4.	The Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1972	To discharge arrears of rent outstanding on 30th June, 1971	11.8.72	—
5.	The Tamil Nadu Cultivating Tenants (Protection from Eviction) Act, 1983	To protect from eviction who are in arrears	2.6.83	1.7.82 to 15.1.1984
6.	The Tamil Nadu Cultivating Tenants (Protection from Eviction) Act, 1989	—	24.11.89	1.10.86 to 31.3.90
7.	The Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act,1990	To discharge from arrears of rent, ending with 30th June,1989	10.10.90	—

The table shows some of the important enactments passed after the Principal enactment, namely the Tamil Nadu Cultivating Tenants Protection Act, 1955. In these, the Acts passed in the years 1972 and 1990 are in the nature of relief intended to give to the cultivating tenants in discharging them from the payment of arrears of rent, subject to certain conditions. The other enactments were passed to protect the cultivating tenants from eviction on the ground of arrears of rent. They were intended to give relief for a limited period only.

CHAPTER IV

THE TAMIL NADU CULTIVATING TENANTS (PAYMENT OF FAIR RENT) ACT, 1956

Till 1956, there was no law in the State to regulate the rent payable by tenants to their landlords. The landlords used to collect exorbitant rent from the farmers and enhance it, at their sweet will and thereby harass the cultivating tenants. Consequently, the cultivating tenants became indebted and they could not pay arrears of rent in time. In order to provide more effective control over the rackrenting by the landlords, the Government felt it necessary to fix the fair rent. Further, by that time the Government passed the Tamil Nadu Cultivating Tenants Protection Act, 1955. This necessitated the regulation of the rent payable by the Tenants and settlement of disputes.

In these circumstances, the Government passed the Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, 1956 and it came into force on 1st October 1956. This Act fixes the fair rent payable by the tenants and affords adequate protection to the tenants against the arbitrary and enhanced rent .

THE SALIENT FEATURES OF THE ACT

(*a*) This Act provides the provision for rights and liabilities of cultivating tenants and land owner ;

(*b*) Section 4 now fixes a simple Rule of fair rent payable by the tenant ;

(*c*) Kaiaeruvaramdar or mattuvaramdar is considered as cultivating tenant under this Act ;

(*d*) This Act contains provisions for the constitution of Rent Courts and Rent Tribunal ;

(*e*) A provision for the surrender of land by the tenant in excess of $6^2/_3$ acres of land is now introduced ;

(*f*) This Act exempts crops like plantain or betal vines from its operation ;

(*g*) The right of land owner to receive 1/5 th of straw or stalk of the crop is now removed.

WHAT IS FAIR RENT?

Section 4 of the Act fixes what is called **fair rent** payable by the tenant to the landowner. Clause (1) of Section 4 says **"Fair rent shall be 25 per cent of the normal gross produce or its value in money".** This sub-clause was substituted in the year 1980 by the Act 17 of 1980. The clause (2) was omitted by the same Act of 1980. Previous to this amendment, different yardsticks were used in fixing the fair rent depending upon the nature of the land, supply of water and use of pumps etc. Further, before 1980 amendment, the land owner was also entitled to one fifth of straw or stalk of all crops. Now, all these provisions were removed. Sub-section (1) simplifies the Rule of fixing the fair rent. Irrespective of nature of land, the fair rent is 25 per cent of the normal gross produce or its value in money.

Sub-section 3 says, where the contract of tenancy provides for payment of **a rent lower than the fair rent** payable, the contract rent alone payable during the contract period and not the fair rent as fixed under this Act.

The fair rent may be paid either in (*a*) in cash or (*b*) in kind or (*c*) partly in cash and partly in kind according to the terms of the contract (Section 5). In the absence of such contract, the fair rent may be paid at the option of the cultivating tenant in any one of the above modes.

Where the tenant failed to exercise his option, within the time specified, the land owner may specify the way in which the fair rent is to be paid. Where the crop raised is paddy, the land owner has the right to insist that the rent shall be paid in kind.

Section 5(2) says about remission in the rent under the adverse seasonal conditions. Whenever adverse seasonal conditions result in the reduction of the gross produce from any particular crop to the extent of more than 25 per cent, the land owner is bound to remit a proportionate part of the fair rent due to him from his cultivating tenant in respect of that land for that period. For this purpose, an application must be made by the tenant claiming remission. The Rent Court may in the circumstances of the case, impose conditions as to deposit of admitted rent which has become due.

The fair rent thus fixed under this Act will remain in force for five years (Section 6). However, the tenant may file an application before the Rent Court for the reduction of fair rent on account of deterioration of the land by floods etc. Similarly, the land owner may make an application to the Rent Court for the enhancement of fair rent on account of improvements made by him in the land resulting the increase of yield. In case, any fair rent is determined under this Act before the Amendment made in 1980 and such rent is in excess of rent specified under Section 4, such rent may be reduced to the fair rent specified in Section 4 as amended in 1980.

The fair rent fixed under this Act will take effect from the date of the application made under the Act and not from the date of actual order of Court fixing fair rent. Section 7 of the Act speaks about the sharing of crops where the produce to be shared is grain, the sharing is to be done at the threshing place in which threshing took place.

THE RIGHTS AND LIABILITIES OF THE PARTIES

The rights and liabilities of the tenant and land owner are based upon the principles of natural justice. Section 3(1) speaks about the liability of the cultivating tenant and the right of the land owner. The liability imposed on the cultivating tenant is to pay the rent to the land owner as fixed under the Act. The right of the land owner is to collect from the cultivating tenant fair rent payable under the Act.

Special provision may be made in the agreement regarding irrigation of any land and sharing the produce by the parties. The land owner is entitled to collect fair rent in spite of any neglect or failure on the part of the tenant in raising the crop. Section 3(3). All the cultivation expenses inclusive of cost of seeds, ploughing, manuring, harvesting and threshing should be borne by the cultivating tenant. Section 3(4).

The other liabilities on the part of the land owner are : (1) to make all payments due to Government and other local authorities like land tax etc. (2) to maintain the land and wells in a state of proper repair. The land owner can claim compensation for damages to land caused by the cultivating tenant. The land-owner may advance loan to the cultivating tenant necessary for better farming like manuring the land. Such a loan advanced will be in first charge on the share of the produce. Likewise, he can help his tenant with his consent by supplying chemical manures and oil cakes and recover the cost of the same from the cultivating tenant.

KAIAERUVARAMDAR AND MATTUVARAMDAR

A special provision is made under Section 4A according to which Kaiaeruvaramdar or mattuvaramdar is deemed to be cultivating tenant under this Act. In this connection we have to see who is kaieruvaramdar or mattuvaramdar. In certain parts of Tiruchirapalli district, a peculiar kind of tenancy in respect of land called kaieruvaramdar or mattuvaramdar exists. A Kaiaeruvaramdar is one engaged by a landlord to do ploughing and watering operations or ploughing operation alone on land and is remunerated for such work by a share in the crop raised on the land. Similarly, a mattuvaramdar is one engaged by land owner to supply bulls for ploughing operations and other operations on the land and receive remuneration for such work, a share in the crop on the land. In order to define the conditions of engagement and to provide protection of kaieruvaramdar and mattuvaramdar, an enactment known as **Tiruchirapalli Kaieruvaramdar and Mattuvaramdar Act** was passed in 1958. Section 4A of this enactment says that with effect from the commencement of the Tamil Nadu Cultivating Tenants Protection and Payment of Fair Rent (Amendment) Ordinance, 1958, they deemed to be a cultivating tenant within the meaning of this Act.

RENT COURTS AND RENT TRIBUNAL

The Government may by notification constitute Rent Courts and Rent Tribunals for the purpose of this Act, with jurisdiction over such areas as may be specified in the notification (Section 8). Every Rent Court shall be headed by a person not below the rank of Tahsildar. The Rent Court is a quasi judicial body. But the Rent Tribunal is a judicial body. The Tribunal is presided by the judicial officer not below the rank of District Munsif [Section 8(2)]. Either party may apply to the Rent Court for fixation of fair rent or for deciding any dispute arising under this Act(Section 9). From every decision of a Rent Court, an appeal shall, within such time as may be prescribed, lie to the Rent Tribunal whose decision will be final subject to revision if any under Section 11.

Exemption from this Act :

This Act of 1956, exempts the land which is used for raising as main crop plantain, betal vines or any other crop which does not give any yield for a continuous period of two years or more from the time of cultivation (Section 15). By Amendment Act, 1980, the crop sugarcane is omitted from this section.

Surrender of land in excess of certain extent :

The provisions of this Act shall not also apply to any cultivating tenant who owns or who cultivates either as tenant or as owner or as both an extent of land in excess of 6 2/3 acres (one veli) of wet land [Section 14(1)].

Sub-section (2) of Section 14 says that ; "Any cultivating tenant who owns or who cultivates either as tenant or as owner or as both, an extent of land exceeding that specified in sub-section (1) but not exceeding 10 acres of wet land may, by notice in writing addressed to the land owner, relinquish at the end of the agricultural year ending in 1957 the tenancy, in respect of such portion of the land aforesaid as may be necessary to entitle him to all the benefits of a cultivating tenant under this Act. Such cultivating tenant shall be entitled to all the benefits of this Act till the end of the agricultural year ending in 1957 and shall thereafter entitled to all the rights of a cultivating tenant under this Act only on such relinquishment.

For the purpose of computing the land 3 acres of dry land or 1 ½ acres of garden land is taken as equivalent to one acre of wet land. Section 14(3).

CHAPTER V

THE TAMIL NADU AGRICULTURAL LANDS RECORD OF TENANCY RIGHTS ACT, 1969

The object of the Act is to provide for the preparation and maintenance of the Record of Tenancy Rights in respect of agricultural lands in the State of Tamil Nadu. The implementation of tenancy laws in Tamil Nadu was very much retarded for want of authentic record of tenancy rights. The conditions stipulated in the Tenants Protection Acts for land owners to tender lease deeds to tenants annually was observed more in breach than in its observance. The tenants were therefore, at the mercy of the land owners in acknowledging their tenancy rights. Receipts were scarcely given for waram delivered by the tenants. The land owners took action to evict the tenants forcibly, taking advantage of the absence of a record of tenancy. Protection was therefore, needed to the tenants. Except in very few cases, the leases were mostly oral and as hitherto there was no record to prove the tenancy, the tenants found it difficult to establish their rights by recorded evidence, and claim the protections given to them under the various tenancy laws.

The Tamil Nadu Cultivating Tenants Protection Act, 1955, and the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 provide *inter-alia* that every tenancy agreement between a land lord and the cultivating tenant shall be executed in triplicate. Despite these provisions many land lords and tenants prefer to keep the leases oral and consequently a correct, complete and reliable record of tenancy rights in the State was not available. The absence of a complete and reliable record of tenancy rights stands in the way of the enforcement of Legislative provisions

which seek to provide security of tenure to the cultivating tenants. The cultivating tenants are also denied credit facilities from institutional agencies as they cannot establish their tenancy rights in the absence of written record of tenancy rights.

The preparation of a complete and reliable record of tenancy rights was therefore considered to be essential to safeguard the interests of the tenants. The Government accordingly enacted the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969(Tamil Nadu Act 10 of 1969). This Act was initially brought into force in the districts of Thanjavur, Tiruchirapalli and Madurai with effect from 19th December 1969. It was extended to the rest of the State with effect from 8th September 1971.

As we have seen earlier, the object of this Act is to provide for the preparation and maintenance of record of tenancy rights in respect of agricultural lands in the State of Tamil Nadu.

SALIENT FEATURES OF THIS ACT

(1) This Act of 1969, elaborately describes the procedure to be followed in the preparation of record of tenancy rights.

(2) Section 4A empowers the Record Officer to take *suo moto* action when the land owner or tenant fails to do their duty.

(3) There is a provision for the constitution of Advisory Committees in order to help the Record Officer in discharging his functions.

(4) It also provides to impose penalty for failure to furnish information or for furnishing false information to the Record Officer. – Section 11.

(5) The newly inserted Section 16A, ousts the jurisdiction of civil Court in respect of any matter which the Record Officer or the District Collector is empowered by the Act to determine.

Before considering the very subject matter of the Act, namely the preparation and maintenance of record of tenancy rights, it is necessary for the proper appreciation of the various provisions of the enactment, to consider some of the definitions given under Section 2.

The expression '*cultivating tenant*' is defined under Section 2(8)(1). A cultivating tenant means in respect of any area in the State (other than the Kanyakumari district), *(a)* any tenant as defined under the Tamil Nadu Cultivating Tenants Protection Act, 1955 and the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 and it includes,

(b) mattuvaramdar and *(c)* a possessory mortgagor. The following are considered as the cultivating tenants:—

1. a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another under a tenancy agreement ;
2. a person who continues in the possession of land after the determination of tenancy agreement ;
3. the heir of such person ;
4. a sub-tenant ;
5. any sub-tenant of sub-tenant who continues in possession of the land ;
6. mattuvaramdar ;
7. possessory mortgagor under the tenancy agreement. This definition does not include a mere intermediary.

The term *intermediary* is also defined under Section 2(3). Intermediary means any person, who not being an owner or a possessory mortgagee, has an interest in land by virtue of a tenancy agreement and is entitled by reason of such interest to possession thereof but has transferred such possession to others.

PREPARATION OF RECORD OF TENANCY RIGHTS

The Section 3 of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 lays down procedure relating to preparation of record of tenancy rights in detailed manner.

The procedure starts with the Notification issued by the Government. In this Notification, Government will direct the preparation of a record of tenancy rights for such village or villages.

(2) The record should contain the following particulars namely:—

(*a*) the survey number or sub-division number, extent and local name, if any, of the land ;

(*b*) the name and address of the landowner ;

(*c*) the name and address of the intermediary, if any ;

(*d*) the name and address of the tenant cultivating the land ; and

(*e*) such other particulars, as may be prescribed.

3. After the Notification, the appointed Record Officer will publish a notice in the village. In that notice he will inform the public that a record of

tenancy is to be prepared for that village and that the land owner, tenant or intermediary of every land which has been let for cultivation should intimate in writing to him of his interest in such land.

4. Afterwards the Record Officer after giving reasonable opportunity to the parties will prepare a draft record of tenancy rights. This record is prepared on the basis of information : (1) given by the parties ; or (2) obtained by the Record Officer under Section 9 ; or (3) furnished or recommended by the Advisory Committee.

5. After the completion of the preparation of the draft record of tenancy rights for a village, such draft will be published in the *District Gazette* and it will be also served on to the parties concerned.

6. The aggrieved person then may submit an application to the Record Officer within the time prescribed for the rectification of any entry or for the inclusion of any particulars in the draft record.

7. For this purpose the aggrieved person should furnish the documents as evidence in support of his claim along with his application.

8. Afterwards the Record Officer after hearing representations from the parties will pass the orders by accepting or rejecting the application. It will be communicated to the parties.

9. After the disposal of all the applications under sub-section (6) he will make necessary alterations in the draft record of the tenancy rights for the village. Then he will prepare final draft.

10. Final record will be published in the *Tamil Nadu Government Gazette*. This record will be then called as **approved record of tenancy rights.** This approved record of tenancy rights will be published in the *District Gazette* also in which the village is situated.

All these procedures are to be followed for the preparation of record of tenancy rights for the village.

If any land has been let for cultivation, subsequent to the publication of the approved record, the land owner, intermediary or the tenant having interest in such land after giving all particulars, request the Record Officer for the inclusion of the land in the approved record of tenancy rights. The Record Officer, after giving reasonable opportunity to the parties concerned will pass necessary order.

Newly inserted Section 4A empowers the Record Officer to take *suo motu* action when the land owner, intermediary or tenant having interest failed to intimate or make an application for the inclusion of particulars relating to such land.

CONSTITUTION OF ADVISORY COMMITTEE

For the purpose of advising the Record Officer in the discharge of his functions and in the preparation of record of tenancy rights under Section 3, the Government will constitute an advisory committee for every taluk in a revenue district (Section 5A). This section was inserted only in the year 1981.

Such committee will consists of following members :

(*a*) one landless agricultural labour belonging to the Scheduled Castes or Schedule Tribes ;

(*b*) one tenant ; and

(*c*) three social workers.

They will hold the post for the period of three years and are eligible for another term not exceeding six years.

THE FUNCTIONS OF THE ADVISORY COMMITTEE

The functions of the Advisory Committee are :

(1) to gather information and particulars regarding the land situated in the taluk with the name, address of the landowner, intermediary and the tenant cultivating such land ;

(2) to furnish the information and particulars so gathered to the Record Officer, ;

(3) to make recommendations to the Record Officer ; and

(4) to perform such other functions as may be assigned.

The Record Officer will take into consideration, the information and particulars furnished and so also recommendations made by the Advisory Committee before passing the orders. If the Record Officer is of opinion, that the recommendation made by the Committee is not acceptable, he shall record his reasons in writing and pass orders accordingly.

The Act makes duty of furnishing information mandatory, when the Record Officer makes the request to land owner, intermediary or tenant cultivating the land. The Act further provides for the penalty for failure to furnish information and for furnishing false information.

After publication of the approval record of tenancy rights, the parties are entitled to get certified copy of any entry in the approved record of tenancy. Any entry in the approved record of tenancy rights shall be presumed to be true and correct until the contrary is proved or a new entry is lawfully substituted therefor – Section 15.

BAR OF JURISDICTION OF CIVIL COURT

Section 16 A is an important section which ousts the jurisdiction of civil Courts in pending matters. It says no civil Court shall have the jurisdiction in respect of any matter which the Record Officer, the District Collector or other officer or authority empowered by or under this Act to determine. No injunction shall be granted in respect of any action taken or to be taken by such officer in pursuance of any power conferred under this Act.

In *(Muniyandi* vs *Rajangam Iyer* AIR 1976 Madras 287) it is pointed out that the Civil Courts' jurisdiction is expressly excluded in respect of any matter which the Record Officer, District Collector or other officer empowered by or under the Act has to determine. It is further pointed out in (*Periyathambi Gounder* vs *District Revenue Officer* AIR (1980) 2 MLJ 89 FB) that in all matters which may arise incidental to the determination of the matters mentioned in Section 3(2) of the Act, the Record Officer or the appellate or revisional authority cannot be said to have exclusive jurisdiction and with reference to such matters the jurisdiction of the Civil Courts cannot be said to have been barred or ousted under Section 16A of the Act.

Therefore it is evident that the Record Officer has exclusive jurisdiction under the Act only to draw up the particulars in the record of rights. To that extent and to that extent alone, the Civil Courts jurisdiction is excluded, ousted and barred. The bar of Civil Courts' jurisdiction extends no further. The Record Officer can undoubtedly exercise powers to investigate with ancillary matters and the Courts' jurisdiction is not thereby excluded under Section16A on those matters.

Thus the Record Officer may have the power to decide whether an individual is cultivating the land. But this is an incidental matter over which his jurisdiction is not exclusive that is to say, it does not exclude the jurisdiction of Civil Courts — [*Periathambi Goundar* vs *District Revenue Officer* AIR 1980 Madras180 (FB) and *V.S.Alwar Iyyangar* vs *Guruswamy Thevar* AIR 1981 Madras 354.]

The order of declaration as to cultivating tenant with possession by the Revenue Authority without considering the implication of decision of Civil Court held to be improper matter remitted back for proper consideration in [*Dhanalakshmi* vs. *The District Revenue Officer, Trichy and others* 2000 (3) MLJ 227 (DB).]

In case, the action before the Civil Court had been instituted before Section 16A was inserted, the Act has no application – [*Sankaralinga Thevar* vs *Thirumalammal* (1977) I MLJ 189.]

CHAPTER VI

THE TAMIL NADU OCCUPANTS OF KUDIYIRUPPU (CONFERMENT OF OWNERSHIP) ACT, 1971

Unless the man who cultivates the land gets his due from out of the produce of the land he will not be interested in producing the food and thus meet the demand of his Countrymen. In order to create a living interest in him for the land he cultivates he must be given fixity of tenure, adequate margin of profit, protection of tenancy, protection of kudiyiruppu etc. So to improve the position of tenants, the Government introduced series of Legislations.

The Pannaiyal system in vogue in the Country was something in the nature of bonded labour, families of farm servants indebted to the land owner, serving him for generations and living in the house sites provided by him. Dismissal of a Pannayal from a farm carried with it, the eviction of family from the house site which he was occupying. Besides, the cultivating tenants, there were other occupants who had put up their houses (kudiyiruppu) either in the site belonging to the land owners for whom they are doing cultivation or on Government lands.

TWO ENACTMENTS FOR THE OCCUPANTS OF KUDIYIRUPPU

Accordingly Government decided that the occupants of kudiyiruppu should be given protection from eviction. Apart from this, Government of Tamil Nadu further decided to confer ownership for the occupants of kudiyiruppu. Hence, two enactments were passed, one in the year 1961, to give protection from eviction and another in the year 1971, to confer ownership on the occupants of kudiyiruppu.

THE TAMIL NADU OCCUPANTS OF KUDIYIRUPPU (PROTECTION FROM EVICTION) ACT, 1961.

In the year 1961, the Madras Occupants of Kudiyiruppu (Protection from Eviction) Act, 1961 (Act 38 of 1961) was enacted as a temporary measure to be in force for a period of three years, the idea being to have it replaced by an Act to confer permanent rights on occupants of kudiyiruppu. It was felt that this question was linked with the question of conferment of rights on tenants of agricultural lands to which the house sites are appurtenant. It was also felt that a satisfactory and enduring solution on the question of conferring permanent rights of kudiyiruppu can be found only after the law dealing with ceiling on land holdings had been fully implemented and the surplus lands had been taken over, and after the Ryotwari Settlement of Inam Estates, Minor Inams and lease holds had been completed. As this would take sometime, the Government in 1964 extended the life of the Principal Act by the Amendment Act of 1967. In 1971, Legislation was passed conferring permanent occupancy rights on occupants of kudiyiruppu, thus assuring right of ownership on the residential premises of the agricultural population as a permanent measure.

The Tamil Nadu Occupants of Kudiyiruppu (Protection from Eviction) Act, 1961, protects the interests of persons occupying kudiyiruppu as on 31st March 1959 from eviction of their kudiyiruppu by their landlords. The Tamil Nadu Act 38/1961 came into force on the 29th November 1961.

According to Section 3 of the Act of 1961, no person occupying any kudiyiruppu shall be evicted from such kudiyiruppu. Any person occupying any kudiyiruppu shall be entitled to continue to occupy the kudiyiruppu on terms and conditions not less favourable than those applicable to him on the date on which he occupied such kudiyiruppu.

THE TAMIL NADU OCCUPANTS OF KUDIYIRUPPU (CONFERMENT OF OWNERSHIP) ACT, 1971.

This Act was passed in the year 1971. The object of the Act is as preamble says : 'to provide for the conferment of ownership rights on occupant of kudiyiruppu in the State of Tamil Nadu'. This Act consists of 27 Sections and one Schedule. It was subsequently amended in the years 1974, 1976, 1986 and 1990. The homesteads are assigned free from all encumbrances. The compensation is paid by the Government.

SALIENT FEATURES OF THIS ACT

1. The first and foremost feature of this enactment is, as preamble says, 'conferment of ownership rights on occupant of kudiyiruppu' in the State of Tamil Nadu.

2. Section 3A of Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, provides a provision of alternative site, in case conferment of ownership cause, inconvenience for convenient enjoyment of such land as a whole by the owner of such land.

3. The Authorised Officer has been empowered under Section 3B to decide :

(*a*) whether a person is an agriculturist or agricultural labourer ;

(*b*) whether any land is an agricultural land ; or

(*c*) whether the site is a kudiyiruppu ; or

(*d*) whether alternative site is necessary and so on.

4. Every person having any interest in any vested kudiyiruppu or superstructure is entitled to receive compensation under Section 6.

5. This Act imposes duty on transferor and transferee to give notice to the Authorised Officer when the site is transferred.

6. The newly inserted Section15 A, prohibits sale, mortgage, lease or other alienations by the occupant of kudiyiruppu for the period of ten years from the date of commencement of the Act. Further the Authorised Officer is empowered to declare such alienation as *null* and *void* or illegal and to take possession of such kudiyiruppu.

7. Section 17 of the Act enables the Government to acquire the land used by the occupants of kudiyiruppu for a common purpose.

8. Like other tenancy Acts, this Act also ousts the jurisdiction of Civil Courts, with respect to any matter the Authorised Officer is empowered by or under this Act.

DEFINITIONS UNDER THIS ACT

For the better appreciation of the various provisions of this Act, it is necessary for us to consider definitions given under Section 2.

WHO IS AGRICULTURAL LABOURER?

According to Section 2(1), an agricultural labourer is *a person whose principal means of livelihood is the income he gets as wages for his manual labour on agricultural land* but does not include a plantation labour.

AGRICULTURAL LAND

The expression agricultural land is also defined under Section 2(2) of this Act. According to it, agricultural land means any land used for any of the following purposes, namely :—

(*a*) horticulture ;
(*b*) the raising of crops, grass or garden produce ;
(*c*) grazing ;
(*d*) the raising of manure crops ;
(*e*) dairy farming ;
(*f*) poultry farming ;
(*g*) livestock breeding ;
(*h*) growing of trees.

It further says that it will include any land used for any purpose subservient to the above purposes, any forest land, pasture land, orchard and tope. However, the expression agricultural land does not include (*i*) plantain, (*ii*) land held for ancillary purposes of plantation or (*iii*) house site or land used exclusively for non-agricultural purposes.

According to this Act, an agriculturist is a person who cultivates agricultural land by the contribution of his own manual labour or of the manual labour of any member of his family. Further, according to explanation I, the person who occupies the kudiyiruppu is presumed as an agricultural labourer or an agriculturist. This is only a presumption till the contrary is proved.

WHAT IS MEANT BY KUDIYIRUPPU?

Section 2(8) of the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971 defines the term kudiyiruppu. *Kudiyiruppu means the site of any dwelling house or hut occupied, either as tenant or as licensee, by an agriculturist or agricultural labourer and includes such other area adjacent to the dwelling house or hut as may be necessary for the convenient enjoyment of such dwelling house or hut.*

It is clear from this definition, that (1) Kudiyiruppu is merely the site of any dwelling house or hut and it includes adjacent area also. (2) It is occupied by an agriculturist or agricultural labourer. (3) He occupies it in the capacity of tenant or licensee. (4) He must be a tenant under a tenancy agreement.

All these elements must present for this definition. Then only it will be considered as kudiyiruppu. Any person occupies the kudiyiruppu is regarded as an agricultural labourer or an agriculturist. This is only a presumption until contrary is proved.

The requirement of Kudiyiruppu is that it should be a site occupied either as a tenant or as a licencee by any agriculturist or by any agricultural labourer. In the absence of these essentials the authorities have no jurisdiction to grant patta [*Umapathi* vs. *The Additional Collector Appellate Authority, Thanjavur and Others* 2000 (2) MLJ]

In determining the question for the purposes of the term kudiyiruppu, any area adjacent to the dwelling house or hut must be enjoyed by the agriculturist or agricultural labourer immediately before the Ist April 1990.

The expression *'person interested'* occurs in many places of this Act. So it is necessary for the proper understanding, to know the meaning of this expression. Section 2(9) defines this expression. Person interested is defined as *any person claiming or entitled to claim an interest in the compensation payable on account of the vesting of kudiyiruppu or super structure in the occupant of kudiyiruppu.*

CONFERMENT OF OWNERSHIP

Section 3 of the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act 1971 speaks about the very object of the Act, *i.e.* to provide conferment of ownership rights on the occupants of kudiyiruppu in the State of Tamil Nadu. This Section consists of three clauses. Clause (1) confers ownership rights on the occupants of kudiyiruppu. It simply says that *any agriculturist or agricultural labourer who was occupying any kudiyiruppu on 1st April 1990, either as tenant or as licensee shall with effect from the date of the commencement of this Act, be owner of such kudiyiruppu and such kudiyiruppu shall vest in him absolutely free from all encumbrances.*

For the purpose of acquiring ownership rights over the site under sub-section (1), the following conditions are to be satisfied :—

(1) The person claiming the benefits of the Act must be an agriculturist or agricultural labourer.

(2) He must be the occupant of kudiyiruppu on 1st April 1990.

(3) He must be there only as tenant or as licensee.

(4) The kudiyiruppu must be one as defined under Section 2(8) of the Act.

(5) He should apply for the ownership rights, within the time prescribed.

The person claiming the benefit must prove that he is an occupant of a kudiyiruppu as tenant or as licensee. Therefore, it is clear that there must be tenancy agreement with respect to the site. The term tenant is defined under Section 2(11). According to it, *tenant means any person who has paid or has agreed to pay rent or other consideration for his being allowed by another to enjoy the land of the latter under a tenancy agreement express or implied and includes his heirs and legal representatives*. Therefore, it is clear from this definition, that it speaks about tenancy of the land only.

Section 3(2) says that in case the superstructure belongs to any person other than the occupant, the superstructure shall also vest with the occupant free from all encumbrances. Clause (2) speaks about the two persons, (*i*) the occupant of the site (*ii*) owner of the superstructure. There ought to be a dwelling house or a hut over the site. The dwelling house or hut could belong either to the occupant or to any other person other than the occupant - may be owner of his site also. In case the occupant is a tenant for both site and superstructure, this provision will not apply. The agriculturist can claim that the site of the dwelling house or hut in his occupation is a kudiyiruppu only if he is a tenant or a licensee in respect of site alone (*T.K.Narayana Pillai* vs *Naganatha Iyer* AIR 1981 Madras 198).

The definition does not apply to a pucca building which an agriculturist may take on lease. The demise by way of lease or licence ought to have been of the site alone. Only where an agriculturist or an agricultural labourer was in occupation of a site on a lease or a licence, express or implied, such a site could fall within the meaning of Kudiyiruppu. If the demise is both of the site and superstructure as a single unit, the matter could not be brought within the purview of the Act (*Rasu Pillai* vs *Additional Tahsildar (Kudiyiruppu)* (AIR 1986 Madras 134.)

The Section 3 further says that dwelling house or hut erected must be more than three cents in extent. *i.e.* the minimum requirement for the site is three cents.

EXCEPTION

Section 3(3) is an exception to Sub-section (1) and it says that nothing contained in Sub-section 1 shall deemed to confer the right of ownership of

kudiyiruppu on any agriculturist or agricultural labourer if he already owns a dwelling house or hut or a house site within a distance of one kilometre from the kudiyiruppu. This is an exception to the provision of conferment of ownership rights over the kudiyiruppu. Such a person cannot claim any benefits under Section 3.

ALTERNATIVE SITE

Section 3A deals with providing alternative site to the occupants of kudiyiruppu by the Authorised Officer. In case, the kudiyiruppu is located in any portion of any land and that the vesting of such kudiyiruppu may cause inconvenience for the convenient enjoyment of such land as a whole by the owner of such land , the owner of the land may request the Authorised Officer to permit him to provide an alternative site. The alternative site will be provided within the same land, or in any other land already owned by the owner. On this application the Authorised Officer will pass the necessary order permitting the owner of the land to provide alternative, subject to certain conditions. The conditions are ; (*i*) it shall be fit for erection of a dwelling house, (*ii*) its extent should not be less than the extent of the existing kudiyiruppu, subject to a minimum of 3 cents. The Authorised Officer may further prescribe that the site must be within certain distance and provided within certain period. In addition to this, he may impose some other conditions also.

While granting the permission, the Authorised Officer will direct the owner to make payments for shifting and erecting a superstructure in the alternative site to the agriculturist or agricultural labourer. The Authorised Officer will grant permission to the owner only where he already owned the alternative site by the owner. These two conditions are to be satisfied. Otherwise, the agriculturist or agricultural labour is entitled to the ownership of the existing kudiyiruppu.

In pursuance of the permission granted by the Authorised Officer, the agriculturist or agricultural labourer will be given an opportunity to occupy the alternative site free from all encumbrances. On the other hand, where any agriculturist or agricultural labourer fails or refuses to shift to the alternative site provided by the owner, in pursuance of the permission granted within the time prescribed, he will not get any benefits under this Act. However, he is entitled to the protection under the Tamil Nadu Occupants of Kudiyiruppu (Protection from Eviction) Act 1961.

AUTHORISED OFFICER

The Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act 1971, empowers the Authorised Officer to exercise powers to decide

various matters under this Act. The term 'authorised officer' is defined under Section 2(4) of the Act. The Authorised Officer means any Revenue Officer not below the rank of Tahsildar. Sections 3A, 3B, 4 and 12 speak about the powers and functions of the Authorised Officer.

If any question arises, (*a*) whether any person is an agriculturist or an agricultural labourer or, (*b*) whether any land is an agricultural land or (*c*) whether any site is a kudiyiruppu or (*d*) whether any area adjacent to a dwelling house or hut is necessary for the convenient enjoyment of such dwelling house or hut; such question will be decided by the Authorised Officer. The Act empowers the Authorised Officer under Section 4 to decide dispute whether he was occupant of the kudiyiruppu on 1st April, 1990.

Any person aggrieved by the decision or order of the Authorised Officer may appeal to the District Collector.

The Authorised Officer, for the purpose of carrying out the provisions of this Act, is entitled to require any person to furnish such information in his possession relating to any vested kudiyiruppu or superstructure. For this purpose, the Authorised Officer is entitled to have all the powers of Civil Court while holding an enquiry. He has the power to issue summon and enforce the attendance of any person, to call for the production of document, to receive evidence, to call for public record from any court or office and to issue commission for examination of witnesses.

COMPENSATION

Sections 6 to 10, 13 and 14 deal with the matters relating to compensation.

Section 6 says that every person having any interest in any vested kudiyiruppu or superstructure shall be entitled to receive and be paid compensation. It is clear from the reading of this Section any person having interest in vested kudiyiruppu or superstructure is entitled to receive compensation. The expression a 'person interested' is defined under Section 2(9). He is a person claiming or entitled to claim, an interest in the compensation payable on account of the vesting of the kudiyiruppu or superstructure in the occupant of kudiyiruppu.

The quantum of compensation is mentioned under the schedule of the Act. There are two clauses in the schedule, one is with respect to kudiyiruppu and another is with respect to the superstructure. (1) The compensation in respect of the kudiyiruppu or the land shall be one hundred times the survey assessment

on the kudiyiruppu or the land. (2) The compensation payable in respect of the superstructure shall be the market value of such superstructure. Section 7(1) of the Act says the compensation will be payable according to the Schedule of the Act.

The Authorised Officer will determine the amount of compensation after holding an enquiry in the prescribed manner. He will later publish the order in the *District Gazette*. A copy of the order will be served to the parties also.

Where the owner of the kudiyiruppu and the owner of superstructure of the kudiyiruppu are different persons, the Authorised Officer will *apportion* the amount of the compensation between them – Section 7(3).

APPEAL AGAINST THE ORDER OF COMPENSATION

Any person who does not agree to the amount of compensation determined by the Authorised Officer may prefer an appeal to the Court within the prescribed time – Section 8.

APPORTIONMENT OF COMPENSATION

In case several persons claim compensation, the Authorised Officer will determine who are entitled to receive compensation and he will also determine the quantum of amount payable to each person. Where any dispute arises (1) as to the apportionment of the compensation or (2) as to the persons, then the Authorised Officer will refer the dispute to the Court. In such cases, the court will follow the procedure as prescribed under the provisions of Part III of the Land Acquisition Act, 1894. There is a similar provision under this Act also.

PAYMENT OF COMPENSATION

After the amount of compensation has been determined, the Government will on behalf of the occupant of the kudiyiruppu pay the amount to the persons entitled thereto. (*a*) if the persons entitled to the compensation do not consent to receive it or (*b*) if there is no person entitled to alienate site or superstructure or (*c*) if there is any dispute as to title, then the Authorised Officer will deposit the amount in the Court. The Court will deal with the amount in the manner laid down in Sections 32 and 33 of the Land Acquisition Act 1894.

The amount of compensation as finally determined will be paid either in cash or in bonds or partly in cash and partly in bonds by the Government – Section 13.

RECOVERY OF COMPENSATION

Section 14 of the Act speaks about the liability of the occupant who has become owner of the kudiyiruppu by virtue of this Act is to reimburse the Government, the amount of compensation paid by the Government. The occupant of kudiyiruppu in whom the kudiyiruppu or superstructure has vested can reimburse the Government by paying in instalments. The amount payable to the Government under this Act will be recovered as if it were an arrears of land revenue.

TRANSFER OF TITLE AND NOTICE OF SUCH TRANSFER

Section 15 of the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971 imposes duty upon the transferor and transferee to give notice of transfer of title over the property. When the title of the person who is primarily liable to reimburse the Government, is transferred, both the transferor and transferee should give notice of transfer within three months to the Authorised Officer. Likewise, if the person primarily liable to reimburse the Government dies, his heir should give notice of his death within one year from the date of death of the deceased. The effect of failure of giving notice is that he should continue to make payment in respect of kudiyiruppu till he gives notice to the Authorised Officer.

PROHIBITION ON ALIENATION OF KUDIYIRUPPU OR SUPERSTRUCTURE

Section 15A deals with ban on alienation of kudiyiruppu by the occupants. There are four clauses under this Section. Clause (1) deals with prohibition on alienation of kudiyiruppu and other clauses deal with consequences of such alienation and steps taken by the Authorised Officer in this regard.

According to clause (1) without previous sanction of the Authorised Officer, no occupant in whom ownership vested, shall *sell, mortgage, lease or otherwise alienate* the whole or any portion of such kudiyiruppu or superstructure for a period of *ten years* from the date of the commencement of this Act. This ban applies even to his heir or legal representatives.

In contravention to sub-section(1) if any alienation is made, Authorised Officer after making an enquiry, by an order will declare such *alienation as null* and *void.* The kudiyiruppu or superstructure will, as penalty, be *forfeited* and *vest* in Government free from all encumbrances.

Similarly, if any agriculturist or agricultural labourer holds such kudiyiruppu or superstructure *in benami* and allows any other person to occupy such

kudiyiruppu or superstructure, the Authorised Officer will declare such *occupation as illegal,* after following all the necessary formalities. On such declaration, the kudiyiruppu or superstructure will be *forfeited* to as penalty and *vest* in, the Government free from all encumbrances. Then, it is duty of such occupant of kudiyiruppu or any other person in possession to vacate such kudiyiruppu and hand over possession immediately after such vesting in the Government. If such persons refuse or fail to vacate and hand over the possession of such kudiyiruppu or superstructure, the Authorised Officer will *evict* such person and *take possession* of such kudiyiruppu or superstructure.

ACQUISITION OF LAND FOR COMMON PURPOSES

Section 17 of the Act empowers the Government to acquire the land that is used by the occupants of kudiyiruppu immediately before the date of commencement of the Act for a common purpose. Necessary formalities prescribed under this Section are to be followed for such acquisition. The common purpose may be use of land for road, pathway, threshing floor and cattle shed. The Government will make available the land under this Section to the occupants of kudiyiruppu to be used for the same common purpose for which it was used. Every person having any interest in any land acquired is entitled to receive and be paid compensation.

OFFENCES BY COMPANIES

Section 21 of the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971 deals with the offences committed by the companies. It says if any person committing an offence under this Act, is a company, every person, who, at the time, the offence was committed was in charge of, and was responsible to, shall be deemed to be guilty of the offence.

BAR OF JURISDICTION OF CIVIL COURTS

As in the other tenancy laws, in this Act also, the jurisdiction of Civil Court is ousted. According to Section 23, Civil Court has no jurisdiction in respect of any matter which the Government are, or the Authorised Officer is empowered by or under this Act, to determine. Further it cannot grant injunction in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

For example, the question whether any agriculturist or agricultural labourer is in possession of kudiyiruppu has necessarily to be decided under Section 4 of the Act by the Authorised Officer. A conjoint reading of Section 4 and Section 23

indicates that if an agriculturist or agricultural labourer raises a dispute that he is in possession of kudiyiruppu on the relevant date, he has to approach the Authorised Officer concerned, for a decision on that point and cannot go before a Civil Court. (*Kalyanasundaram Udayar* vs *Pazhaniappa Udayar* AIR 1983 Madras 86).

The combined effect of the provisions of Section 3B and Section 23 is that in the field exclusively earmarked for the Authorised Officer, the Civil Court's jurisdiction is taken away. Further, a reference to Section 5 of the Act will disclose that it provides an appeal to the District Collector or such officer as may be specified by the Government in this behalf against the decision of the Authorised Officer made under Section 3B of the Act. The questions to be determined by the Authorised Officer under Section 3B are within his exclusive jurisdiction. The issues, whether any person is an agriculturist or an agricultural labourer or whether any site is a kudiyiruppu are to be determined by the Authorised Officer under Section 3B and the Civil Courts jurisdiction is barred in respect of such matters. (*R. Veerappan* vs *Shanmugavelu* AIR 1982 Madras 445)

In (*Thangavelu Naicker* vs *Muthukumara Chettiar* (1979) 2 MLJ 369), it was held that the plaintiff came forward with a suit for injunction asserting that he is an agriculturist in possession of kudiyiruppu and as such his possession should be protected by the issue of an injunction. Such a suit was held to be barred by Section 23 of the Act as the plaintiff himself seeks a decision from the Civil Court that he is an agriculturist in possession of kudiyiruppu.

CHAPTER VII

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

(ACT No. 30 of 2013)

In the year 2013, Parliament enacted an Act called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, replacing 120 years old Land Acquisition Act, 1894. This provides fair compensation to those whose land is taken away and it provides transparency to the process of acquisition. It lays down the procedure and rules for granting compensation, rehabilitation and resettlement to the affected persons. It aims to establish the law on land acquisition, as well as the rehabilitation and resettlement to those directly affected by the land acquisition in India.

Land acquisition is the process by which land owned by persons are compulsorily acquired. It is different from the purchase of land, which is a contract between a willing seller and a willing buyer on mutually acceptable terms. Acquisition is where the landowner has no choice over parting with the land, and is forced to relinquish his property. Therefore the process of acquisition overrides the property rights of private landowner. This can be justified only, if a case can be made for greater benefit in taking away someone's land ownership rights.

Land acquisition is a concurrent subject and governed by Central and State laws. The main Central Act, governing land acquisition is the

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act. States can enact laws to land acquisition in their territories.

Under the Act of 2013, land can be acquired only for the projects that have a "public purpose", which has been defined in this Act. Each of these projects will require a Social Impact Assessment (SIA) to determine whether the potential benefits of the projects outweigh the social costs.

As we have seen earlier, this Act, replaces the Land Acquisition Act, 1894. The provisions of this Act was found to be inadequate in addressing certain issues related to the exercise of the statutory powers of State for involuntary acquisition of private land and property. It did not cover the issues of rehabilitation and resettlement to the affected persons and the families. There had been multiple amendments to the Land Acquisition Act, 1894, not only by the Central Government and but the State Governments as well. But, these amendments not satisfied the growing developments. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, address concerns of the farmers and those whose livelihood are dependent on the land being acquired, while at the same time facilitating land acquisition for industrialisation, infrastructure and urbanisation projects in timely and transparent manner.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, represents a change in the legislative approach in land acquisition. It introduces for the first time, provisions for social impact assessments, recognises non-owners as affected persons, a mode of acquisition requiring consent of the displaced and statutory entitlements for rehabilitation.

The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 was introduced in Lok Sabha on 7th September, 2011. The Bill was then passed by it on 29th August, 2013 and Rajya Sabha on 4th September, 2013. The Bill then received the assent of the President of India on 27th September, 2013. The Act came into force from 01-01-2014.

Preamble

The preamble of this Act, states the scope, aims and objectives of the Act. It is for the purpose,—

1. to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution of India, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families ;
2. to provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition ;
3. to make adequate provisions for such affected persons for their rehabilitation and resettlement ;
4. to ensure that the cumulative outcome of compulsory acquisition should be, that affected persons become partners in development leading to an improvement in their post acquisition, social and economic status and for matters connected therewith or incidental thereto.

This Act aims to establish the law on land acquisition, as well as the rehabilitation and resettlement of those directly affected by the land acquisition in India. The scope of this Act includes all land acquisition whether it is done by the Central Government of India or any State Government, including the State of Jammu and Kashmir by the Jammu and Kashmir Re-organisation Act, 2019 (34 of 2019) (w.e.f. 31-10-2019).

The application of this Act

Section 2 of this Act deals with application of the Act. Section 2(1) says that, the provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply,

when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose.

It will include the following purposes, namely :—

(a) for strategic purposes relating to naval, military, air force, and armed forces, etc., or State police, safety of the people ; or

(b) for infrastructure projects, including :—

(i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs ;

(ii) projects involving agro-processing, etc. ;

(iii) project for industrial corridors or mining activities, etc. ;

(iv) project for water harvesting and water conservation structures, sanitation ;

(v) project for Government aided educational and research schemes or institutions ;

(vi) project for sports, health care, tourism, transportation or space programme ;

(vii) any other infrastructure facility required by Government ;

(c) project for project affected families ;

(d) project for housing ;

(e) project for planned development or the improvement of village sites, etc. ;

(f) project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, etc.

When the Government declares public purpose and shall control the land directly, consent of the landowner shall not be required. However, when the Government acquires the land for private companies, the consent of at least 80% of the project affected families shall be obtained through a prior informed process before Government uses its power under the Act to acquire the remaining land for public good, and in the case of public-private project at least 70% of the affected families should consent to the acquisition process :

Provided that the process of obtaining the consent shall be carried out along with the Social Impact Assessment (SIA) study referred to in Section 4 :

It is further provided that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law relating to land transfer, prevailing in such Scheduled Areas.

Section 2(3) of this Act speaks about rehabilitation and resettlement. It will apply to the cases where, (a) a private company purchases land, equal to or more than such limits in rural areas or urban areas through private negotiations with the owner of the land in accordance with the

provisions of Section 46 ; (b) a private company requests the appropriate Government for acquisition of a part of an area so prescribed for a public purpose.

Definitions

Section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, defines various terms like affected family, agricultural land, cost of acquisition, displaced family, entitled to act, family, landless, landowner, marginal owner, person interested, resettlement area, small farmer, etc.

"affected family".— Section 3 (c) defines this term in elaborate manner. An "affected family" will include the following :—

(i) a family whose land or other immovable property has been acquired ;

(ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants or artisans whose primary source of livelihood stand affected by the acquisition of land ;

(iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights due to acquisition of land ;

(iv) family whose primary source of livelihood for 3 years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land ;

(v) a member of the family who has been assigned land by the State Government or the Central Government under any of their schemes and such land is under acquisition ;

(vi) a family residing on any land in the urban areas for preceding 3 years or more prior to the acquisition of the land or whose primary source of livelihood for 3 years prior to the acquisition of the land is affected by the acquisition of such land ;

"agricultural land".— Section 3(d) defines the term agricultural land. It means land used for the purpose of—

(i) agriculture or horticulture ;

(ii) dairy farming, poultry farming, pisciculture, sericulture, seed farming, breeding of livestock or nursery, growing medicinal herbs ;

(iii) raising of crops, trees, grass or garden produce ; and

(iv) land used for the grazing of cattle ;

"cost of acquisition".— Section 3(i) says what will be included under the heading cost of acquisition. The term cost of acquisition includes —

(i) amount of compensation including solatium and interest ;

(ii) demurrage to be paid for damages caused to the land and standing crops in the process of acquisition ;

(iii) cost of acquisition of land and building for settlement of displaced or adversely affected families ;

(iv) cost of development of infrastructure and amenities at the resettlement areas ;

(v) cost of rehabilitation and resettlement ;

(vi) administrative cost ;

(vii) cost of undertaking "Social Impact Assessment study" ;

"displaced family".— This term is defined under Section 3(k). "Displaced family" means any family, who on account of acquisition of land has to be relocated and resettled from the affected area to the resettlement area ;

"entitled to act".— The meaning of this term is given under Section 3(l). According to this, the trustees, the guardians of minors and the committees or managers of lunatics are deemed to be considered as persons entitled to act ;

"family".— As per Section 3(m), family includes a person, his or her spouse, minor children, minor brothers and minor sisters dependent on him. However, that widows, divorcees and women deserted by the families are considered as separate families ;

"land".— This term includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. This definition is similar to the definition of land under the Transfer of Property Act, 1882 ;

"landless".— Landless means such persons or class of persons who may be considered or specified as such under any State law ;

"landowner".— This term is defined under Section 3 (r) as any person,—

(i) whose name is recorded as the owner of the land or building or part thereof, in the records of the authority concerned ; or

(ii) any person who is granted forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) ; or

(iii) who is entitled to be granted Patta rights on the land ; or

(iv) any person who has been declared as such by an order of the Court or Authority ;

"marginal farmer".— It means a cultivator with an un-irrigated land holding up to one hectare or irrigated land holding up to one-half hectare ;

"person interested".— Section 3(x) defines this term in elaborate manner. Person interested means —

(i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act ;

(ii) Scheduled Tribes and other traditional forest dwellers, who have lost any forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) ;

(iii) a person interested in an easement affecting the land ;

(iv) persons having tenancy rights ; and

(v) any person whose primary source of livelihood is likely to be adversely affected ; *Government of NCT of Delhi* vs. *Manav Dharam Trust*, AIR 2017 SC 2450 – Any person whose primary source of livelihood is likely to be affected is also a person interested ;

"public purpose".— This means the activities specified under sub-section (1) of Section 2 ;

"small farmer".— It means a cultivator with an un-irrigated land holding up to two hectares or with an irrigated land holding up to one hectare, but more than the holding of a marginal farmer.

CHAPTER - II

Determination of Social Impact and Public Purpose

A.— Preliminary investigation for determination of social impact and public purpose

Section 4 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, is a very important section as it deals with preliminary investigation for determination of social impact and public purpose. It provides the initial stages of procedure which is to be followed in land acquisition proceedings.

Preparation of Social Impact Assessment study (Section 4).— Whenever the Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation, in the affected area and carry out a Social Impact Assessment study in consultation with them. Afterwards, notification issued by the Government shall be made available in the local language and published in the affected areas, and also uploaded on the website of the Government. Proper representation to be given to the representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation. Further, it is directed under Section 4(2), that the Social Impact Assessment study must be completed within a period of six months from the date of its commencement.

Consultation with the local bodies, issue of notification, its publication in local language, uploading it on the website of the Government and publication of Social Impact Assessment study report are the initial stages in the preparatory work.

Section 4 (3) makes availability of Social Impact Assessment study report to the public mandatory.

Contents of the Social Impact Assessment study report.— According to Section 4(4) the study report should include the following matters, namely :—

(a) assessment as to whether the proposed acquisition serves public purpose ;

(b) estimation of affected families and the number of families among them likely to be displaced ;

(c) extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition ;

(d) whether the extent of land proposed for acquisition is the absolute bare-minimum extent needed for the project ;

(e) whether land acquisition at an alternate place has been considered and found not feasible ;

(f) study of social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project *vis-a-vis* the benefits of the project.

At the same time, Environmental Impact Assessment study should be carried out simultaneously. It should not be contingent upon the completion of the Social Impact Assessment study [Section 4(4)].

What are things that should be taken into consideration while Government undertaking a Social Impact Assessment study? Section 4(5) answers to this question. The Government while undertaking the study, it should consider the following components :– Livelihood of affected families, public and community properties, assets and infrastructure, particularly roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities, such as post offices, fair price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, anganwadis, children parks, places of worship, land for traditional tribal institutions and burial and cremation grounds.

Section 4(6) speaks about the preparation of a Social Impact Management Plan.

Public hearing for Social Impact Assessment.— Section 5 of this Act seeks to provide public hearing for Social Impact Assessment to ascertain the views of the affected families and to be recorded and included in the Social Impact Assessment Report.

Publication of Social Impact Assessment study.— Section 6 of this Act states that the Social Impact Assessment study report and Social Impact Management Plan are to be prepared and made available in the local language to concerned bodies as in the case of publication of notification. Its copy should be sent to the Central Government Agency.

B.— Appraisal of Social Impact Assessment Report by an Expert Group

Section 7 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, deals with evaluation of expert group, its constitution, and its recommendation and publication of recommendation of expert group.

Every Social Impact Assessment Report must be evaluated by an independent multi-disciplinary Expert Group.

The Expert Group constituted under Section 7(1) shall include the following, namely,—

(a) two non-official social scientists ;
(b) two representatives of Panchayat, Municipality, etc. ;
(c) two experts on rehabilitation ; and
(d) a technical expert in the subject relating to the project.

Section 7(4) and (5) speak about opinion of Expert Group either in favour of report or against the report.

Where the Expert Group is of the opinion that (a) the project does not serve any public purpose ; or (b) the social costs and adverse social impacts of the project outweigh the potential benefits, it should make such recommendation within two months from the date of its constitution and that the project should be abandoned forthwith. The report must be in writing with reasons for such decision. In spite of its adverse opinion proceeds with acquisition, then it must be in writing with the reasons.

Where the Expert Group is of the opinion that (a) the project will serve any public purpose ; and (b) the potential benefits outweigh the

social costs and adverse social impacts, it should make specific recommendations within two months from the date of its constitution. The report must be in writing with the reasons for such decision.

The recommendations of the Expert Group must be made available in the local language and to the local bodies concerned.

Government Examination.— Section 8 speaks about Government's Examination of the proposals for land acquisition and Social Impact Assessment report.

Where the Government satisfies that,—

(a) there is a legitimate and *bona fide* public purpose for the proposed acquisition which necessitates the acquisition of the land identified ;

(b) the potential benefits and the public purpose outweigh the social costs and adverse social impact as determined by the Social Impact Assessment that has been carried out ;

(c) only the minimum area of land required for the project is proposed to be acquired ;

(d) there is no unutilised land which has been previously acquired in the area ;

(e) the land, if any, acquired earlier and remained unutilised, is used for such public purpose and make recommendations in respect thereof.

In this process the Government should examine the report of the Collector, and report of the Expert Group and then recommend such area for acquisition and ensure minimum displacement of people, minimum disturbance to the infrastructure, ecology and minimum adverse impact on the individuals affected.

Apart from these the Government should also ascertain as to whether the prior consent of the affected families has been obtained.

Exemption from Social Impact Assessment.— Section 9 of this Act states under what circumstance that the Social Impact Assessment may dispense with. Where land is proposed to be acquired invoking the urgency provisions under Section 40, the Government may exempt undertaking of the Social Impact Assessment study.

CHAPTER - III

Special provision to safeguard food security

Section 10 of this Act deals with acquisition of irrigated multi-cropped land and its prohibition.

Section 10 (1) says, no irrigated multi-cropped land shall be acquired. However, under exceptional circumstances and as a last resort, it can be acquired.

Whenever multi-crop irrigated land is acquired, an equivalent area of cultivable wasteland shall be developed for agricultural purposes or an amount equivalent to the value of the land acquired shall be deposited with the Government for investment in agriculture for enhancing food security.

In a case not falling under sub-section (1), the acquisition of the agricultural land in aggregate for all projects in a district or State, shall in no case exceed such limits of the total net sown area of that district or State, as may be notified by the Government [Section 10(4)].

However, this shall not apply in the case of projects that are linear in nature such as those relating to railways, highways, major district roads, irrigation canals, power lines and the like.

CHAPTER - IV

Notification and Acquisition

Chapter IV of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, is very important as it relates all matters relating to notification and acquisition of land under Sections 11 to 30. It deals many matters like publication of preliminary notification, survey of land, hearing of objections, preparation of rehabilitation and resettlement scheme, to review publication, notice to persons interested, enquiry, determination of market value and compensation and award of solatium.

Publication of preliminary notification.—Section 11 deals with issue of preliminary notification and mode of publication.

Section 11 of this Act enacts that whenever, it appears to the Government that land in any area is required or likely to be required for any public purpose, a notification should be published.

Mode of publication.— The publication must be —

(a) in the Official Gazette ;

(b) in two daily newspapers ;

(c) in the local language in the Panchayat or other local bodies ;

(d) uploaded on the website of the Government ;

(e) in the affected areas, in such manner as may be prescribed.

Immediately after issuance of the notification, the contents must be informed to the local bodies. It should inform the nature of public purpose, reasons for it, summary of the Social Impact Assessment Report and particulars of the Administrator appointed for the purposes of rehabilitation and resettlement.

No transaction.— Section 11(4) makes it clear that no person should make any transaction of land specified in the preliminary notification or create any encumbrances on such land.

Preliminary survey of land and power of officers to carry out survey.— In order to determine the extent of the land to be acquired, lawfully appointed officer and his servants can do any of this following acts,—

(a) to enter upon and to take survey ;

(b) to dig or bore into the sub-soil;

(c) to do all other acts to ascertain whether the land is adapted for such purpose ;

(d) to set out the boundaries of the land ;

(e) to mark boundaries.

But while doing any of these acts that it must be done in the presence of the owner of the land.

Lapse of Social Impact Assessment Report.— Section 14 speaks about time limit of Lapse of Social Impact Assessment Report. Where a preliminary notification is not issued within twelve months from the date of appraisal of the Social Impact Assessment Report submitted by the Expert Group, then such report shall be deemed to have lapsed. A fresh Social Impact Assessment shall be required to be undertaken prior to acquisition proceedings :

However, Government, shall have the power to extend the period of twelve months, and in doing so, reasons must be given in writing.

Objections by any person interested.— Section 15 of this enactment gives right to objection to any person interested in proposed land acquisition. It says that any person interested in any land which has been notified as being required or likely to be required for a public purpose, may within sixty days from the date of the publication of the preliminary notification, may object to it. He may object to —

(a) area and suitability of the land proposed to be acquired ;

(b) justification offered for public purpose ;

(c) findings of the Social Impact Assessment report.

Section 15(2) speaks about further acts of the Collector. Objection by the person interested must be in writing. Then, the Collector will give him an opportunity of being heard in person. After hearing all such objections, he will make an inquiry about it. Afterwards the Collector will send his report to the Government, containing his recommendations on the objections, together with the record of the proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of that Government.

The decision of the Government on the objections made under sub-section (2) of Section 15 shall be final.

Preparation of Rehabilitation and Resettlement Scheme

Sections 16 to 19 of this Act deal with matters relating to preparation of Rehabilitation and Resettlement Scheme by the Administrator.

Upon the publication of the preliminary notification under Section 11 by the Collector, the Administrator for Rehabilitation and Resettlement shall conduct a survey and undertake a census of the affected families.

The survey and census of the affected families should contain the following :—

(a) particulars of lands and immovable properties being acquired of each affected family ;

(b) livelihoods lost in respect of land losers and landless whose livelihoods are primarily dependent on the lands being acquired ;

(c) a list of public utilities and Government buildings which are affected or likely to be affected, where resettlement of affected families is involved ;

(d) details of the amenities and infrastructural facilities which are affected or likely to be affected, where resettlement of affected families is involved ; and

(e) details of any common property resources being acquired.

Based on the survey and census as discussed above, the Administrator has to prepare a draft Rehabilitation and Resettlement Scheme, covering all particulars relating to rehabilitation and resettlement entitlements of each landowner and landless whose livelihoods are primarily dependent on the lands being acquired.

The draft should include time limit for implementing Rehabilitation and Resettlement Scheme. Further, it should be made known locally by wide publicity in the affected area. For this purpose, a public hearing has to be conducted. The Administrator on completion of public hearing submit the draft to the Collector.

Review of the Rehabilitation and Resettlement Scheme by the Collector.— Under Section 17, the Collector will review the draft Scheme and submit it with his suggestions to the Commissioner of Rehabilitation and Resettlement for the approval of the Scheme. Then the Commissioner has to made available of the approved Scheme in the local language in the affected localities and also publish it in the affected areas.

Publication of declaration and summary of Rehabilitation and Resettlement

When the Government is satisfied, after considering the report, that any particular land is needed for a public purpose, a declaration shall be made to that effect, along with a declaration of an area identified as the "resettlement area" for the purposes of rehabilitation and resettlement of the affected families [Section 19(1)].

The Collector should publish a summary of the Rehabilitation and Resettlement Scheme along with declaration.

Acquisition in stages.— In projects where land is acquired in stages, the application for acquisition itself can specify different stages for the rehabilitation and resettlement, and all declarations shall be made according to the stages so specified [Section 19(3)].

Declaration for "Resettlement" area should be published in the following manner, namely :—

(a) in the Official Gazette ;

(b) in two daily newspapers being circulated in the locality ;

(c) in the local language in the Panchayat, etc. ;

(d) uploaded on the website of the Government ;

(e) in the affected areas, in such manner as may be prescribed.

Conclusive evidence.— Such declaration is considered as conclusive evidence as to the land required for a public purpose. Then the Government may acquire the land in such manner as specified under this Act.

Effect of non-declaration.— Declaration is anecessary component in land acquisition proceedings. If no such declaration is made within twelve months from the date of preliminary notification, then such notification shall be deemed to have been rescinded. However, Government has power to extend the period of twelve months in writing.

Marking.— After such declaration, the Collector will cause the land to be marked out and measured, and a plan to be made of the same.

Notice to persons interested as to taking possession.— Section 21 states that the Collector will publish the public notice on his website and cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensations and rehabilitation and resettlement for all interests in such land may be made to him [Section 21(1)].

Appearance of persons interested and submission of statement relating to their claim.— The public notice requires the persons interested to appear and submit a report. The words persons interested is defined under Section 3(x). The person interested may appear in person or through advocate before the Collector within thirty days from date of notice.

They have to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, their claims to rehabilitation and resettlement along with their objections, to the measurements made under Section 20.

Such statements by the persons interested must be made in writing and signed by them.

Likewise, the Collector also serve notice to the occupier of land.

In case any person so interested resides elsewhere, and has no such agent, notice is to be sent to him by post addressed to him at his last known residence, and also publish the notice in at least two national daily newspapers and also on his website.

The Collector will also require any person to make or deliver a statement containing the name of every other person possessing any interest in the land as co-proprietor, sub-proprietor, mortgagee, tenant, likewise.

Enquiry and land acquisition award by Collector

Section 23 deals with an important aspect in the land acquisition proceedings. The Collector will proceed to enquire into the objections to the measurements made and to the value of the land at the date of publication of notification and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement and make an award. In this award he has to mention,—

(a) the true area of the land ;

(b) compensation along with Rehabilitation and Resettlement Award ; and

(c) the apportionment of the said compensation among all the persons known or believed to be interested in the land.

Application of Land Acquisition Act, 1894 and lapse of the Act

Section 24(1) says (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),—

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply ; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act :

Section 24 of this Act speaks about under what circumstances the old Act called the Land Acquisition Act, 1894 deemed to have lapsed and not lapsed and also under circumstances the provisions of Act 30 of 2013 will apply even that the award was made under the Act 1894 but no possession was taken or compensation was not paid.

Section 24 (2) speaks about the circumstances where an award is made five years prior to the Act 30 of 2013, but neither possession is not taken or compensation is not paid.

Section 24 of the 2013 Act envisages mainly two situations :—

(i) where the land acquisition proceedings had already being initiated under the Act, 1894 but no award was passed till the date the new Act came into force ;

(ii) where the award has been passed but the neither the owner has been dispossessed nor has been paid the compensation.

Case Laws

Under the first, where the award has not been passed, the land acquisition proceedings could continue ; but the compensation will have to be determined under the Scheme of Act 30 of 2013. Under the second category, there is a statutory lapse of the proceedings. There is also an incidental third situation, where award under the Act, 1894 had already been passed prior to the coming into force of the Act, 2013 but payment is yet to be made and possession is yet to be taken. In that case, the further proceeding after the award could continue

under the old Act, 1894, but if either payment or possession had not taken effect in five years prior to the Act, 2013, then proceedings will lapse. [*Aligarh Development Authority vs. Megh Singh*, AIR 2016 SC 2912 ; 2016 (4) MLJ 662 (SC)].

No deposit of compensation

The Land Acquisition Act, 1894 being an expropriatory legislation has to be strictly followed. The award pertaining to the subjects land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the Act, 2013. It is also admitted position that compensation so awarded has neither been paid to the landowners / persons interested, nor deposited in the Court. The deposit of compensation amount in the Government Treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners / persons interested. The Supreme Court have therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the Act 30 of 2013 [*Pune Municipal Corporation* vs. *Harakchand Misirimal Solanki*, (1 MLJ 874 (SC) ; *S. Perumal Gounder vs. Chief Secretary, Government of Tamil Nadu*, 2015 (1) CWC 310].

No deposit of compensation.— There is a proviso clause under Section 24. It says where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries shall be entitled to compensation in accordance with the provisions of the Act.

Under Section 24(2) of the 2013 Act, where an award under Section 11 of the 1894 Act has been passed and in case of compensation has not been paid to the landowners or deposited before the Court in terms of the requirements under the 1894 Act, the acquisition proceedings set lapsed. In case compensation has not been paid, the acquisition proceedings in respect of the acquisition will stand lapsed, as if there is no acquisition. Where the land is compulsorily acquired, it is for the Requisitioning Authority to make the payment and does not require the landowners to come and receive the payment [*Vijay Latka* vs. *State of Haryana*, 2013 (5) MLJ 80 (SC)].

As and when land is taken over by way of acquisition, the landowner has to be compensated with the amount of compensation duly determined under the Act. In case there is any dispute as to who is to be paid the amount, the same is to be deposited in Court in terms of Section 31 of the Land Acquisition Act, 1894. It is for the authorities concerned to pay the money and to take the land and in case there is any dispute as to whom the money should be paid, then the same has to be deposited in Court. As admittedly, no compensation has been

paid to the appellants in their case in terms of the above-mentioned award, the appellants are entitled to succeed. Accordingly, the appeal is allowed. The proceedings for acquisition of land of the appellants are covered by the notification issued under Section 4(1) of the Land Acquisition Act, 1894 and leading to the award stand set aside as having been lapsed [*Vijay Latka* vs. *State of Haryana*, 2016 (5) MLJ 80 (SC)].

Compensation has not been paid by respondents to appellant for acquisition even though more than five years had lapsed from the date of award when Act, 2013 came into force, physical possession of land belonging to Appellant was not taken by Respondents as well. Hence, acquisition proceedings in respect of Appellant's land had lapsed [*Velaxan Kumar* vs. *Union of India*, AIR 2015 SC 1462].

Under Section 16 of the Land Acquisition Act, 1894, once award has been made by the Collector under Section 11 of the said Act, the Collector has to take possession of the land and only thereupon the land will vest in the Government free from all encumbrances. Therefore, passing of the award by itself will not enable the appellant to take a contention that the land has automatically vested with the land on passing of the award. It is not in dispute that in all these cases, the land has not been taken possession of by the Collector within 5 years or more prior to when the 2013 Act came into force [*Delhi Development Authority* vs. *Reena Suri*, 2016 (4) MLJ 370 SC].

If award has been passed prior to 5 years, but not physical possession of land has been taken or compensation has not been paid, then the land acquisition proceedings initiated under the 1894 Act deemed to have lapsed. Further, though compensation was deposited and possession of land was not taken within 5 years from the date of passing of the award, then land acquisition proceedings initiated under the 1894 Act deemed to have lapsed in terms of Section 24(2) of 2013 Act [*A. Nagarajan* vs. *Secretary to Government, H & UD Development*, 2014 (6) MLJ (29)].

The right conferred to the landholders / owners of the acquired land under Section 24 (2) of the Act is the statutory right and therefore the said right cannot be taken away by an ordinance inserting proviso to the above-said sub-section without giving retrospective effect to the same [*R. Radhakrishnan* vs. *Secretary to Government of Tamil Nadu*, 2015 (1) SCALE 590].

There was no possession taken of the land in question, nor was there any compensation paid by the appellant even though award was passed 5 years back before the commencement of the Act of 2013. It is sufficient ground for granting protection envisaged by Section 24 (2) – [*Government of NCT of Delhi* vs. *Jagjit Singh*, AIR 2015 SC 2683].

Land was acquired under the Land Acquisition Act, 1894 for setting up residential colony. No award was passed and no land value was given to owner. There arises no question of lapse. Proceedings would continue but compensation is to be determined under the provision of Act of 2013. (*Aligarh Development Authority* vs. *Megh Singh*, AIR 2016 SC 2912].

Acquisition proceedings started 5 years prior to the commencement of Act of 2013. Appellants in the instant case have not been dispossessed and have not also been paid compensation though award was passed in the year 2007. It has been held that acquisition proceedings have stood lapsed [*Shashi Gupta* vs. *State of Haryana*, AIR 2016 SC 4817].

Time-limit to make an award.— As per Section 25, the Collector should make an award within a period of twelve months from the date of publication of the declaration under Section 19. If no award is made within that period, the entire proceedings for the acquisition of the land shall lapse.

However, the Government shall has power to extend the period of twelve months and if so, it must be in writing justifying the same. The same has to be notified and be uploaded on the website of the authority concerned.

Determination of market value

Section 26 of the Act of 2013, narrates modes of assessing and determining market value of the land. The Collector should adopt the following criteria, namely :—

(a) the market value, specified in the Indian Stamp Act, 1899 for the registration of sale deeds or agreements to sell, in the area, where the land is situated ; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area ; or

(c) consented amount of compensation as agreed under sub-section (2) of Section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher :

Provided that the date for determination of market value shall be the date on which the notification has been issued under Section 11.

There are four explanatory clauses under Section 26 which speaks about different ways and determination of the market value.

The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

Section 26 (3) speaks about the cases where the market value cannot be determined.

Determination of amount of compensation

After having determined the market value of the land to be acquired, the Collector should calculate the total amount of compensation to be paid to the landowner by including all assets attached to the land [Section 27].

Parameters in determining an award

In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall take into consideration —

firstly, the market value as determined under Section 26 and the award amount in accordance with the First and Second Schedules ;

secondly, the damage sustained by the person interested, by reason of taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof ;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land ;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings ;

fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change ;

sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 19 and the time of the Collector's taking possession of the land ; and

seventhly, any other ground which may be in the interest of equity, justice and beneficial to the affected families.

Services of engineer or experienced persons in determining value of things attached to land or building

Section 29 states about determination of market value of buildings and other immovable properties, assets attached to the land or building, value of trees and plants and standing crops damaged during the process of acquisition. It requires the Collector to utilise the services of competent engineer, specialists, and experienced persons, as the case may be.

Award of solatium

The Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a "Solatium" amount equivalent to one hundred per cent of the compensation amount [Section 30].

Solatium amount shall be in addition to the compensation payable to any person whose land has been acquired.

In this regard, the Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.

In addition to the market value of the land provided under Section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of the publication of the notification of the Social Impact Assessment study under sub-section (2) of Section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

CHAPTER - V

Rehabilitation and Resettlement Award

Chapters V to VIII deal with all matters pertaining to Rehabilitation and Resettlement under Sections 31 to 74.

Rehabilitation and Resettlement Award

The Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the Second Schedule.

The Rehabilitation and Resettlement Award shall include all of the following, namely :—

(a) rehabilitation and resettlement amount payable to the family ;

(b) bank account number of the person to which the rehabilitation and resettlement award amount is to be transferred ;

(c) particulars of house site and house to be allotted, in case of displaced families ;

(d) particulars of land allotted to the displaced families ;

(e) particulars of one time subsistence allowance and transportation allowance in case of displaced families ;

(f) particulars of payment for cattle shed and petty shops ;

(g) particulars of one-time amount to artisans and small traders ;

(h) details of mandatory employment to be provided to the members of the affected families ;

(i) particulars of any fishing rights that may be involved ;

(j) particulars of annuity and other entitlements to be provided ;

(k) particulars of special provisions for the Scheduled Castes and the Scheduled Tribes to be provided.

Infrastructural amenities

The Collector shall ensure the provision of all infrastructural facilities and basic minimum amenities specified in the Third Schedule in every resettlement area [Section 32]. The details of provisions of roads, drainage, drinking water, post offices, etc., are elaborately given under the Third Schedule.

Corrections to awards

Section 33 seeks to provide correctness to awards by the Collector for any clerical or arithmetical mistakes in either of the awards or errors arising therein either on his own motion or on the application of any person interested or local authority.

Powers of Collector in certain matters

Sections 34 to 36 speak about the power of the Collector to grant adjournments, power to summon and enforce attendance and power to compel the production of documents, etc.

When awards of Collector to be final ?

Section 37 seeks to provide that awards of Collector shall be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and market value of the land and the assets attached thereto, solatium so determined and the apportionment of the compensation among the persons interested.

Power to take possession

Section 38 empowers the Collector to take possession after compensation be paid within the time framed.

When additional compensation to be paid ?

Section 39 states under what circumstances the Collector has to pay additional compensation. The Collector shall not displace any family which has already been displaced by the Government for the purpose of acquisition, and if so displaced, shall pay an additional compensation equivalent to that of the compensation determined under this Act for the second or successive displacements.

The case of urgency to acquire land

Section 40 deals with the special powers of Government to acquire land in cases of urgency. In cases of urgency the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned under Section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances.

But, it is restricted to the minimum area acquired for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament.

The Collector shall not take possession of any building without giving at least forty-eight hours notice to the occupier.

The Collector should tender payment of eighty per cent of the compensation before taking possession of any land.

An additional compensation of seventy-five per cent. of the total compensation as determined under Section 27, shall be paid by the

Collector in respect of land and property for acquisition of which proceedings have been initiated under sub-section (1) of this section.

Special provisions for Scheduled Castes and Scheduled Tribes

Section 41(1) clearly says as far as possible, no acquisition of land shall be made in the Scheduled Areas. However, it can be done as a last resort. In case of acquisition of any land in the Scheduled Areas, prior consent of concerned local body is necessary. In the case of a project involving land acquisition on behalf of a Requiring Body which involves involuntary displacement of the Scheduled Castes or the Scheduled Tribes families, a Development Plan should be prepared. That Development Plan shall also contain a programme for development of alternate fuel, fodder and non-timber forest produce resources on non-forest lands within a period of five years.

In case of land being acquired from the members of the Scheduled Castes or the Scheduled Tribes, at least one-third of the compensation amount due should be paid to the affected families. Further, they should be resettled preferably in the same Scheduled Area. If any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of the laws and regulations shall be treated as null and void and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be made available to the original tribal landowners or landowners belonging to the Scheduled Castes. If they have any fishing rights in a river or pond or dam, they must be given alternative rights in the reservoir areas.

Where the affected families belonging to the Scheduled Castes and the Scheduled Tribes are relocated outside of the district, then, they should be paid an additional twenty-five per cent rehabilitation and resettlement benefits.

Section 42 confers all benefits, including the reservation benefits available to the Scheduled Tribes and the Scheduled Castes in the affected areas shall continue in the resettlement area too. Further, it is provided that when they are relocated outside those areas, the benefits will be extended in the resettlement area.

CHAPTER - VI

Procedure and Manner of Rehabilitation and Resettlement

Administrator

Where the Government is satisfied that there is likely to be involuntary displacement of persons due to acquisition of land, it shall, appoint in respect of that project, an officer called Administrator for Rehabilitation and Resettlement. He will be provided necessary office infrastructure with officers and employees to assist him and vested with powers and duties. The formulation, execution and monitoring of the Rehabilitation and Resettlement Scheme shall vest in the Administrator [Section 43].

Commissioner for Rehabilitation and Resettlement

The Commissioner for rehabilitation and resettlement is appointed under Section 44 of this Act, and he is responsible for supervising the formulation of rehabilitation and resettlement schemes or plans and proper implementation of such schemes or plans. He is also responsible for the post-implementation social audit in consultation with the Gram Sabha in rural areas and municipality in urban areas.

Constitution of Rehabilitation and Resettlement Committee at project level

Where land proposed to be acquired is equal to or more than one hundred acres, the Government shall constitute a Committee under the Chairmanship of the Collector to be called the Rehabilitation and Resettlement Committee, to monitor and review the progress of the implementation of the Rehabilitation and Resettlement scheme and to carry out post-implementation social audit in consultation with the Gram Sabha in rural areas and municipality in urban areas. Section 45(2) mentions who will be members of that Committee.

CHAPTER - VII

National Monitoring Committee for Rehabilitation and Resettlement

Chapter VII of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, deals with

establishment of National Monitoring Committee and State Monitoring Committee for reviewing and monitoring the implementation of rehabilitation and resettlement schemes.

Section 48 is relating to Establishment of National Monitoring Committee for reviewing and monitoring the implementation of rehabilitation and resettlement schemes or plans under this Act.

Similarly, a State level Committee is established under Section 50.

The State and Central Governments provide such officers and staff to monitoring Committees.

CHAPTER - VIII

Establishment of Land Acquisition, Rehabilitation and Resettlement Authority

Constitution of Land Acquisition, Rehabilitation and Resettlement Authority.— For the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement, the Government will establish, an authority called "the Land Acquisition, Rehabilitation and Resettlement Authorities" [Section 51]. The Government will also notify its jurisdiction for entertaining and deciding the references made to it under Section 64.

The Authority shall consist of only one person referred as the Presiding Officer. The Presiding Officer, for the appointment must be in the rank of District Judge or a legal practitioner having not less than seven years experience. The Presiding Officer is appointed by the Government in consultation with the Chief Justice of a High Court. He will hold office for a term of three years or until he attains the age of sixty-five years, whichever is earlier. The Government will provide him a Registrar and such other officers to assist him.

The provisions relating to salary and allowances, and filling up of the post of Presiding Officer, his resignation and removal are stated under Sections 56 to 58. The order of the appointment as the Presiding Officer by Government cannot be called in question in any manner [Section 59].

Powers of Authority.— The Authority shall, for the purposes of its functions, shall have the same powers as are vested in a civil Court. The Authority has following powers, namely :—

(a) summoning and enforcing the attendance of any person and examining him on oath ;
(b) discovery and production of any document or other material object producible as evidence ;
(c) receiving evidence on affidavits ;
(d) requisitioning of any public record ;
(e) issuing commission for the examination of witnesses ;
(f) reviewing its decisions, directions and orders ;
(g) any other matter which may be prescribed.

Original jurisdiction.— The Authority shall have original jurisdiction to adjudicate upon every reference made to it under Section 64.

Procedure.— Even though the Authority is not bound by the procedure laid down in the Code of Civil Procedure, but should be guided by the principles of natural justice. The Authority has power to regulate its own procedure [Section 60(3)].

Disposal.— The Authority shall, after receiving reference under Section 64 and after giving notice of such reference to all the parties concerned and after affording opportunity of hearing to all parties, dispose of such reference within a period of six months from the date of receipt of such reference and make an award accordingly.

Judicial proceedings.— All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of provisions of Indian Penal Code and it deemed to be a civil Court under the provisions of Code of Criminal Procedure.

Civil Court has no power.— No civil Court except High Court has jurisdiction to entertain any dispute relating to land acquisition and civil Court has no power to grant any injunction in acquisition matters.

Reference

Section 64 refers reference to Authority by Collector. Any person interested, who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority. It may be, his objection to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of compensation, etc.

The Collector has within a period of thirty days from the date of receipt of application, to make a reference to the Authority. In cases of failure of Collector, the applicant may apply to the Authority requesting it to direct the Collector to make the reference.

Collector's statement to Authority

In making the reference, the Collector shall state for the information of the Authority, in writing under his hand —

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon ;

(b) the names of the persons whom he has reason to think interested in such land ;

(c) the amount awarded for damages and paid or tendered under Section 13, and the amount of compensation awarded under the provisions of this Act ;

(d) the amount paid or deposited under any other provisions of this Act ; and

(e) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined [Section 65(1)].

Sections 66 to 68, deal with procedural aspects relating to attendance, forum, etc.

What are the points that Authority has to consider in determining the amount of compensation and discussed under Section 69 of this Act? In determining the amount of compensation the Authority shall take into consideration whether the Collector has followed the parameters set out under Sections 26 to Section 30 and the provisions under Chapter V of this Act. In addition to the market value of the land, the Authority shall award an amount calculated at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of the publication of the preliminary notification under Section 11 in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. Apart from this the Authority shall award a solatium of one hundred per cent over the total compensation amount.

The award must be in writing signed by the Presiding Officer of the Authority, and such award deemed to be a decree.

Section 71 speaks about payment costs.

Section 74 provides the relief of appeal against the award to the High Court.

CHAPTER - IX

Apportionment of Compensation

Sections 75 and 76 deal with the provisions relating to particulars of specification of apportionment and the question of dispute as to apportionment. Where there are several persons interested, and they agree with the apportionment granted, the particulars of such apportionment must be specified in the award. The award shall be conclusive evidence of the correctness of the apportionment.

When the amount of compensation has been settled, if any dispute arises as to the apportionment, the Collector may refer such disputes to the Authority.

CHAPTER - X

Payment

Section 77 of this Act deals with the payment of compensation and speaks about tendering payment by Collector to the persons interested. Can making an award under Section 30, the Collector has to tender payment of compensation to the persons interested and has to pay it to them by depositing the amount in their bank accounts.

Deposit in the Authority.— If the person entitled to receive compensation (1) is not consenting to receive it, or (2) if there is no person to alienate the land, or (3) if there is any dispute as to the title to receive the compensation or (4) if there is a dispute as to apportionment, the Collector has to deposit the amount of the compensation in the Authority.

Investment of money deposited in respect of lands belonging to person incompetent to alienate

Section 78, if any money is deposited in the Authority and it appears that the land in respect whereof the same was awarded belong to any person who had no power to alienate the same,—

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held ; or

(b) if such purchase cannot be effected forthwith, then in such Government of other approved securities as the Authority concerned shall think fit,

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied —

(i) in the purchase of such other lands as aforesaid ; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

Section 78 (2) speaks about payment of costs of investments.

Sections 79 and 80 deal with investment of money deposited in other cases payment of interest.

CHAPTER - XI

Temporary Occupation of Land

Section 81 seeks to provide for temporary occupation of waste or arable land, for a period of 3 years on payment of compensation. It says whenever the temporary occupation and use of any waste or arable land are needed for any public purpose, the Government may direct the Collector to procure the occupation and use of the same not exceeding three years from the commencement of such occupation.

For the occupation, the Collector has to pay such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

In case of the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Authority [Section 81(3)].

Section 82 empowers the Collector to enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the notice given in this regard.

In case land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, Government may acquire it permanently for a public purpose as if it was needed.

Where difference as to condition of land arises at the expiration of the term, the Collector shall refer it to the Authority [Section 83].

CHAPTER - XII

Offences and Penalties

Section 84 deals with punishment, penalty for giving false information, and for the offences committed and cognisances of offences by Court.

Punishment, for giving false information

If any person, provides any false or misleading information, or produces any false document, he shall be punished with imprisonment for a term which may extend to six months, or with fine or both. In the case of availing of rehabilitation and resettlement benefits, by making a false claim, etc., it will be recovered by the Government. In case a public servant is guilty of a *mala fide* action, disciplinary proceedings will be taken against him.

Penalty for contravention of provisions of Act.— If any person contravenes any of the provisions relating to payment of compensation or rehabilitation and resettlement, every such person should be liable to a punishment of six months which may extend to three years or with fine or both.

Offences by companies.— Where an offence has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Offences by Government departments.— Where an offence under this Act has been committed by any department of the Government, the head of the department, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Only a Metropolitan Magistrate or a Judicial Magistrate of the first class shall be competent to try any offence punishable under this Act. Every offence under this Act shall be deemed to be non-cognisable. Only Collector or any other officer authorised by the Government or any member of the affected family can prefer a complaint.

CHAPTER - XIII

Miscellaneous

Chapter XIII of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, deals with miscellaneous provisions under Sections 91 to 114.

Withdrawal of acquisition proceedings.— The Government has at liberty to withdraw the acquisition of any land of which possession has not been taken. In that case, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of acquisition proceedings. He shall pay such amount to the person interested, together with all costs reasonably incurred by him.

In the case of acquisition of house, etc., only part of the house cannot be acquired where the owner desires that whole of such house is to be acquired.

Exemption from income tax, stamp duty and fees.— Section 96 provides that no income tax or stamp duty shall be levied on any award or agreement made under this Act, except under Section 46 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

No change of ownership.— Section 100 states that no change of ownership without specific permission from the appropriate Government shall be allowed.

Return of unutilised land.— When any land acquired under this Act remains unutilised for a period of five years from the date of taking

over the possession, the same shall be returned to the original owner or owners or their legal heirs, or to the Land Bank.

Option of Government to lease.— The Government shall, wherever possible, be free to exercise the option of taking the land on lease, instead of acquisition, for any public purpose referred to in sub-section (1) of Section 2.

The Central Government has power to amend or alter any of the Schedule by notification [Section 106].

The State Government can enact any law to enhance or add to the entitlements enumerated under this Act which confers higher compensation than payable under this Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under this Act [Section 107].

Section 108 seeks to provide for option to affected families to avail better compensation and rehabilitation and resettlement, where a State law or a policy framed by the Government of a State provides for a higher compensation than calculated under this Act.

Section 109 empowers the Government to make rules by notification, for carrying out the provisions of this Act.

Repeal of Land Acquisition Act, 1894

Section 114 of this Act, repeals old Act called as "Land Acquisition Act, 1894" (1 of 1894).

Schedules

There are four Schedules attached to this Act, namely,— (1) Compensation for landowners ; (2) Elements of rehabilitation and resettlement entitlements for all the affected families (both landowners and the families whose livelihood is primarily dependent on land acquired) in addition to those provided in the First Schedule ; (3) Provision of infrastructural amenities ; and (4) List of enactments regulating land acquisition and rehabilitation and resettlement.

CHAPTER VIII

TAMIL NADU REGULATION OF RIGHTS AND RESPONSIBILITIES OF LANDLORDS AND TENANTS ACT, 2017

Government of Tamil Nadu passed Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 to regulate rights and responsibilities of Landlords and Tenants in the year 2017 and to replace 58 years old Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The new legislation is on the lines of Model Tenancy Act, suggested by the Government of India as one of the mandatory conditions to be fulfilled by the State. The purpose of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 was to regulate the rent as well as give powers to the Government to take certain properties on rent at fair rate even against the wishes of the property owner if it was desirable in the interest of the State or required by the Government. These provisions made long back when supply of rental accommodation was limited, real estate business had not evolved and properties were vest in the hands of very few people. The new law aims to regulate the rent as per the terms and conditions of the agreement to be entered into between the owner of premises and the tenant. It also aims to balance the rights and responsibilities of the landlords and the tenants and provide regulation of the rent as per the agreement.

Amendment.— Subsequently, the Government of India has sent another Model Tenancy Act, 2017 which is different from the earlier Model Tenancy Act, 2015. In order to give effect to the model code, Government of Tamil Nadu decided to amend the said Tamil Nadu Act, 42 of 2017 suitably.

The present Act provides tenants with security and restricts landlords in their ability to evict their tenants. It eliminates loopholes which laid both, landlords and tenants open to the possibility of deceit.

Preamble

The preamble of Act of 2017 states, "An Act to establish frame work for the regulation of rent and to balance the rights and liabilities of landlords and tenants and to provide fast adjudication process for the resolution of disputes, and matters connected therewith or incidental thereto".

Date of commencement

Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, came into force on the 22nd February, 2019.

This Act extent to all urban areas of State of Tamil Nadu.

Definitions

Section 2 of this Act deals with definition of various terms like, "Agreement", "Tenancy Agreement", "Landlord", "premises", "property manager", "Rent Court", "rent payable", "Rent Tribunal", "Tenants", etc.

(1) **"Agreement" or "Tenancy Agreement".**— Section 2 clause (a) defines this term as written agreement executed by the landlord and tenant, and this includes a sub-tenancy agreement and sub-lease agreement.

(2) **"Landlord".**— "Landlord" is defined under Section 2(c) and this definition is inclusive. Landlord is a person who for the time being is receiving or is entitled to receive the rent of any premises, on his account, *i.e.*, the premises were let to a tenant. This includes his successor-in-interest. Further, it includes trustee, guardian and receiver.

(3) **"premises".**— This is defined under Section 2(f) of the Act. According to it, premises mean any building, or part of a building which is, or is intended to be, let separately for the purpose of residence or for commercial or for educational use, except the premises registered under the Factories Act, 1948. It includes (i) the garden, grounds and out-houses, if any, appertain to such building or part of the building, (ii) any fitting to such building or part of the building for the more beneficial enjoyment thereof but does not include hotel, lodging house, dharmashala or inn or the like.

(4) **"property manager".**— This definition is inclusive one. It means a person or company who is employed, by the landlord to manage the premises and who represents the landlord in his dealings with the tenant. Sections 17-19 deal with role of the property manager.

(5) **"Rent Court".**— Rent Court means a Rent Court constituted under Section 32, sub-section 2(j). Any tenant or landlord may approach the Rent Court in seeking relief directly in certain matters or on appeal from an order of the Rent Authority. Section 31(4) states that presiding officer of the Rent Court shall be in the cadre of a District Judge.

(6) **"Rent Tribunal".**— Rent Tribunal means the Rent Tribunal constituted under Section 35, sub-section 2(l). This is the appellate forum for all matters arising on appeal from the Rent Court. The Rent Tribunal set up under Section 35 is multi-member body headed by a principal Appellate member, preferably retired High Court Judge.

(7) **"Tenant".**— The term tenant is defined under Section 2(n). This definition is vast and applicable to implied situations also. In effect, the definition is expansive to include even sub-tenants and any person in possession of property. This definition says, "tenant means a person by whom or on whose account or behalf the rent of any premises is, or but for a contract express or implied, would be payable for any premises and includes any person occupying the premises as sub-tenant and also, only person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act, but shall not include any person against whom any order or decree for eviction has been made". That is he is a person by whom or on whose account or behalf the rent of any premises would be payable.

(8) **"Rent Authority".**— Rent Authority means an officer appointed under Section 30.

Exclusions.— The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 provides exemption to the application of the Act. It mentions premises where this Act has no application. They are —

(a) premises owned or promoted by the Central or State Government, Local Authority or Government undertaking or enterprise or statutory body or cantonment board ;

(b) premises owned by a company, university, etc. ;

(c) premises owned by religious or charitable institutions ;

(d) premises owned by wakf ;

(e) any other premises specifically exempted in public interest by Government.

Tenancy

Chapter II of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 deals with "tenancy". Section 4 speaks about tenancy agreement. It makes it mandatory for the parties to intimate. Rent Authority in writing of any contract of Tenancy. This applies to existing tenancy also. Intimation is to be given vide the prescribed form detailed in First Schedule of the Act. Section clearly says no person shall after the commencement of this Act, let or take on rent any premises except by an agreement in writing.

Under Section 4(2), where prior to the commencement of this Act, no agreement in writing was entered into, the landlord and tenant should enter into an agreement in writing with regard to that tenancy within a period of [1][five hundred and seventy five days] from the date of commencement of this Act.

However, where the landlord or tenant failed to enter into an agreement, the landlord or tenant will have the right to apply for termination of the tenancy.

Section 4(3) speaks about registration of the tenancy with the Rent Authority by making an application in the form specified in the First Schedule.

After receiving the application for registration, the Rent Authority has to register it within the period of thirty days. He has power to reject it, if it is not in conformity with the provisions of the Act.

Afterwords, the Rent Authority has to upload the name of the parties, details of the premises and tenure of the tenancy along with registration number within 15 days from the date of registration.

Effect of non-registration

A document which has to be registered is not registered under Section 4(3) of the Act, it will not (a) affect any immovable properly or (b) confer any power to adopt or (c) received in evidence. The registration under this Act, is independent by registration required under the Indian Registration Act.

Period of Tenancy

Section 5 of the Act speaks about the period, renewal or extension and effect of non-renewal of the tenancy.

(1) All tenancies entered into after the commencement of the Act, shall be for a period as agreed between the landlord and tenant and as specified in the tenancy agreement.

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1. Substituted by Tamil Nadu Ordinance No. 5 of 2019, dated 31-10-2019, published in the T.N. Govt. Gazette, Ext. P. IV, S. 2, (Issue No. 413), w.e.f. 20-09-2019.

(2) The tenant may approach the landlord for renewal or extension of the tenancy, within the period agreed to in the tenancy agreement, prior to the end of the tenancy period and if agreeable to the landlord may enter into a new tenancy agreement with the landlord on mutually agreed terms and conditions.

(3) If a tenancy for a fixed term ends and has not been renewed or the premises have not been vacated by the tenant and where the landlord has not demanded possession of vacant premises at the end of such tenancy, the tenancy shall be deemed to be renewed on a month-to-month basis on the same terms and condition as were in the expired tenancy agreement, for a maximum period of six months.

Inheritability of tenancy

Section 6 describes how long the tenancy subsist and what will happen after his lifetime. Tenancy will come to end after the lifetime of tenant [Section 6(1)].

In the event of the death of a tenant, the right of tenancy of residential and non-residential premises shall devolve for the remaining period of tenancy to his successors-in-interest in the following order :—

(a) spouse ;

(b) sons, daughters or daughters-in-law ;

(c) either or both of the surviving parents.

However, this is subject to the proviso that the successors had been living / working at the said premises till the death of the tenant.

Sub-letting

Section 7 of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 speaks about tenant's right to assign or sub-let the premises.

Section 7(1) says that no tenant should without the previous consent in writing of the landlord (a) sub-let and (b) transfer or assign his rights in the tenancy. For this purpose he has to obtain the prior consent of the landlord for any such action.

Where the premises are sub-let as provided in sub-section (1), the tenant should inform the landlord the date of commencement or termination of sub-tenancy, as the case may be, within one month of the commencement or termination.

CHAPTER - III

Rent

Chapter III of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, speaks about payment of rent, revision of rent and security deposit.

Payment of rent depends upon (1) before and (2) after commencement of this Act. In the case of tenancy entered before the commencement, it again depends upon whether agreement was in writing.

(a) In case the new tenancies entered into after the commencement of this Act, it is the rent agreed to between the landlord and the tenant.

(b) In the case of tenancies entered into before the commencement, and if there is no agreement executed, the rent agreed in the agreement executed between there under sub-section (2) of the Section 4.

(c) In the case tenancies entered into before the commencement, and where there is agreement in writing, the rent agreed between them.

Revision of rent

Revision of rent between the landlord and the tenant shall be as per the terms set out in the tenancy agreement [Section 9(1)].

However, as agreed in the agreement, the landlord shall give notice in writing three months before the revised rent becomes due.

In case tenant fails to give notice of termination of tenancy, he shall be agreed to have accepted whatever rent increase has been proposed by the landlord [Section 9(3)].

If the tenancy is for a fixed term, it cannot be increased during the currency of the tenancy period, unless it is mentioned in the agreement - [Section 9(4)].

Where the landlord has incurred expenditure on account of improvement, addition or structural alteration, the landlord may increase the rent and where tenant agreed to it earlier.

Rent Authority to fix or revise rent

The Rent Authority, on an application made by the landlord or tenant, shall fix or revise, as the case may be, the rent and other charges payable by the tenant and also fix the date from which the revised rent becomes payable, in accordance with the tenancy agreement entered into between the parties – Section 10.

Security deposit

As per Section 11, the landlord cannot change security deposit more than 3 times the monthly rent. The security deposit is to be refunded when the landlord resumes the possession.

CHAPTER - IV

Obligations of landlord and tenant

Sections 12 to 20 deal with obligations of landlord and tenant. Section 18 is about property manager. Delivery of original agreement and giving of receipt are primary obligations of landlord.

The landlord should give the original signed and registered agreement to the tenant within 15 days from the date of registration.

It is obligatory on the part of tenant to pay rent within the stipulated period and when he makes payment of rent, then it is the duty of landlord to issue receipt.

Where the landlord does not accept any rent or refuses to give a receipt, the tenant has to send it to landlord by postal money order or any other method. In case the landlord does not accept them, the tenant has to deposit the same with Rent Authority – [Section 14(1)].

The withdrawal of rent and other charges deposited under sub-section (1) or sub-section (2), as the case may be, shall not operate as an admission against the person withdrawing it to the correctness of rent or any other fact stated by the tenant – [Section 14(4)].

Repair and maintenance

Section 15 imposes a common duty on the landlord and the tenant in repair and maintenance work. They bound to keep the premises in a good condition as at the commencement of the tenancy except for normal wear and tear. The responsibilities are specified in the Second Schedule of the Act.

Part A :

Responsibilities of the landlord :—

(1) Structural repair except those necessitated by damage caused by the tenant ;

(2) White washing of walls and painting of doors and windows ;

(3) Changing and plumbing pipes when necessary ;

(4) Internal and external electrical wiring and related maintenance when necessary.

Part B :

Periodic repairs to be got done by the tenant :—

(1) Changing of tap washers and taps ;
(2) Drain cleaning ;
(3) Water closet repairs ;
(4) Wash basin repairs ;
(5) Bath tap repairs ;
(6) Geycer repairs ;
(7) Circuit breaker repairs ;
(8) Switches and socket repairs ;
(9) Repairs and replacement of electrical equipment except major internal and external changes ;
(10) Kitchen fixtures repairs ;
(11) Replacement of knobs and locks of doors, cupboard, windows, etc. ;
(12) Replacement of fly nets ;
(13) Replacement of glass panels in windows, doors, etc. ;
(14) Maintenance of gardens and open spaces let out or used by the tenant.

Common facilities.— In case of common facilities shared among the tenants or with the landlord, the respective responsibilities of each tenant and landlord shall be specified in the tenancy agreement.

In the event of tenants' refusal, the landlord can do the repairs and the tenant is liable to pay expenses.

In the event of landlord's refusal, the tenant can do it and deduct the same from the rent.

Where the premises is uninhabitable without the repairs and the landlord has refused to carryout the required repairs, tenant can abandon the premises after giving 15 days notice in writing or by approaching the Rent Authority– [Section 15(5)].

Tenants duty to look after the premises

During the tenancy, the tenant shall —

(a) not intentionally or negligently damage the premises or permit such damage ;
(b) notify the landlord of any damage as soon as possible ;
(c) take reasonable care of the premises and its contents – (Section 16).

Entry with notice

Section 17 of this Act speaks about the right of the landlord to enter into the property. But, it must be with 24 hours prior written notice to the tenant. It may be for the following purposes.

(a) to carry out repairs or replacement or to do or get work done in the premises ;

(b) to carry out an inspection of the promises for the purpose of determining whether the premises is in a habitable state ;

(c) for any other reasonable reason for entry specified in the tenancy agreement.

Property manager

Sections 18 and 19 deal with the property manager, his role and responsibilities.

The landlord can hire a property manager to manage the tenancy. In that case, he should provide the tenant, the following information, namely :—

(a) property manager's name ;

(b) the proof that he is agent of the landlord and employed by the landlord ;

(c) if the property manager is a company, name of the company, employee who can be contacted in relation to the tenancy agreement.

Role and responsibilities of property manager

The functions of the property manager are given under Section 19. They are :—

(a) collection of rent against receipt ;

(b) getting essential repairs done on behalf of the landlord ;

(c) inspection of premises, from time to time ;

(d) giving notices to tenant for —

(i) proper maintenance of the premises ;

(ii) delay in payment of rent ;

(iii) revision of rent ;

(iv) vacation of premises ; and

(v) renewal of tenance.

In addition to these, to help in resolution of disputes among the tenants and between landlord and tenant and any other matters relating to tenancy.

Cutting off or withholding essential supply or service

Section 20 of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 prohibits cutting off or withholding essential supply or service in the premises. Essential services are, supply of water, electricity, lights in passages, lifts and on staircases, conservancy, parking, communication links, sanitary services and the like.

No landlord or tenant either by himself or through any person shall cut off or withhold any essential supply or service in the premises occupied by the tenant or the landlord [Section 20(1)].

In case of contravention of sub-section (1) and on complaint from the landlord or tenant, the Rent Authority may pass interim order directing the restoration of supply of essential services immediately pending inquiry.

Then he will conduct inquiry and complete it within one month of filing such complaint. He may also levy penalty on the person responsible for cutting off or withholding of the essential supply.

The Rent Authority has power to direct that compensation be paid to the landlord or tenant if he finds that the complaint was made frivolously or vexatiously.

CHAPTER - V

Repossession of the premises by the landlord

Section 21 of this Act, mention under what grounds the landlord is entitled to get repossession of the premises. Sub-section (2) states various grounds on which the landlord is entitled to get repossession. Except on the grounds mentioned here the tenant cannot be evicted during the continuance of tenancy agreement.

The grounds for repossession by the landlord are :—

(a) When the landlord or tenant failed to enter into an agreement under sub-section (2) of Section 4 ;

(b) When the tenant has not paid arrears in full of rent payable for two months within one month of notice of demand for the arrears of such rent ;

(c) When the tenant parted with the possession of whole or part of the premises without obtaining written consent of the landlord ;

(d) Continuous misuse of the premises even after receipt of notice from the landlord to stop such misuse ;

(e) Where the premises is required for carrying out any repairs or rebuilding or alterations or additions or demolition which cannot be carried out without the premises being vacated ;

(f) Where the premises is required for carrying out any repairs or rebuilding or alterations or additions or demolition for change of its use as a consequence of change of land use by the competent authority ;

(g) Where premises are required by the landlord for occupation for himself or for any member of his family or for any person for whose benefit the premises were held ;

(h) Where the tenant has given written notice to quit and in consequence of that notice, the landlord has contracted to sell the accommodation or has taken any other step.

Recovery of possession for occupation

Section 22 speaks about next step under Section 21(g). Where an order for recovery of possession of any premises is made on the ground specified in clause (g) of sub-section (2) of Section 21, the landlord is entitled to obtain possession thereof within a period of one month in the case of residential premises and three months in the case of non-residential premises from the date of passing of eviction order.

Where eviction is obtained on this ground [Section 22(2)], the Act makes the landlord accountable to such repossession. If the same is not adhered to and landlord re-lets the same to any person within 3 years without permission of the Rent Court, then the Rent Court can penalise the landlord not more than Rs. 25,000/-.

Other provisions

Compensation.— Section 23 allows the landlord to claim compensation of double the rent from the tenant where the tenant has failed to vacate the premises on termination of a rental agreement notice or failure to comply with such order to vacate.

Refund of advance rent received from tenant.— Where the landlord exercised the right of recovery of possession under Section 21(2), and had received the rent or any other payment in advance, he has to refund it to the tenant.

Payment of rent during eviction proceedings.— Section 25 allows the Rent Court to direct the tenant to pay the rent to the landlord during the proceedings for recovery of possession, if the tenant contests the claim for eviction.

Permission to build additional structures.— Section 26 permits the landlord to make any improvement with the help of the Court. According to this section where the landlord proposes to make any improvement or construct any additional structure and the tenant refuses to allow the landlord to do it, the Rent Court on application made by the landlord may permit him to do such work.

Special provision regarding vacant sites and severance of the vacant site.— Section 27 provides a relief to the landlord and he is entitled to the vacanted portion of tenanted premises and claim possession for development. The Rent Court has power to pass orders allowing landlord to sever such portion for developing the same under Section 27 irrespective of tenant's refusal or the pendency of any eviction proceedings without affecting tenant's rights. On application by the landlord for such severance, the Rent Court may —

(a) direct such severance ;
(b) place the landlord in possession of the vacant land ;
(c) determine the rent payable by the tenant in respect of the premises ; and
(d) make such other orders as it thinks fit in the circumstances of the case.

Binding order of the Rent Court.— Section 28 makes it clear that the order of the Court is binding over all occupants of the premises for the recovery of possession of such premises.

Giving up possession by the tenant.— The tenant may give up possession of the premises on giving such notice as is required under the tenancy agreement and in the absence of any stipulation relating to such notice, tenant shall give notice to the landlord at least one month before giving up possession of the premises.

CHAPTER - VI

Appointment of Rent Authorities, their powers and functions

Sections 30 and 31 of this Act speak about appointment of Rent Authority and its power and procedure.

The Collector will appoint an officer, not below the rank of Deputy Collector to be the Rent Authority for the area within his jurisdiction to which this Act applies.

The Rent Authority will have the same powers as are vested in Rent Court under this Act, in any proceedings under Section 9, 10, 14, 15 and 20 of the Act. The procedure as laid down in Sections 36 and 39 of the Act shall be followed in disposal of such application.

CHAPTER - VII

Rent Courts and Rent Tribunals

Sections 32 to 39 deal with constitution of Rent Court, Rent Tribunals, their powers, jurisdiction, appeal and execution of order.

Rent Court.— Section 32 of this Act deals with constitution of Rent Court. The Government may by notification constitute such number of Rent Courts in as many urban areas as may be deemed necessary by it. If there is already a Rent Court exists, Government may designate it as the Rent Court under this Act. A Rent Court will be headed by a Presiding Officer to be appointed by the Government in consultation with the High Court. Presiding Officer must belong to a member of State Judicial Service.

The Rent Court will receive appeals against the order of Rent Authority. An appeal must be preferred within 30 days from the date of order made by the Rent Authority.

Jurisdiction.— Only the Rent Court and no Civil Court shall have jurisdiction to hear and decide the application relating to disputes between landlord and tenant. The Rent Court in deciding such application should give due regard to the provisions of the Transfer of Property Act, 1882, Indian Contract Act, 1872 or any other substantive law applicable to such matter.

The procedure before the Rent Court is stated under Section 36. The procedures are common to Rent Court and Rent Tribunals.

Rent Tribunals

Constitution of Rent Tribunals.— Under Section 35, the Government may constitute one or more Rent Tribunals as it requires at such places and notify therein. The Rent Tribunal may consists of one or more Benches, with each Bench being headed by an Appellate Member. The Senior most Appellate Member shall function as the Principal Appellate Member. He has power to transfer appeal cases from one Bench to another. All the members of Rent Tribunal shall be appointed by the Government in consultation with the High Court. Appellate member must belong to State Higher Judicial Service.

Procedure of Rent Court and Rent Tribunal.— The procedure to conduct enquiries is mentioned under Section 36. The Rent Court and Rent Tribunal are not bound by the procedure laid down by the Code of Civil Procedure, 1908, but guided by the principles of natural justice and will have power to regulate their own procedure.

The Rent Court will the following procedure, namely —

(a) the landlord or the tenant may file an application before the Rent Court accompanied by affidavits and documents, if any ;

(b) the Rent Court, then shall issue notice to the opposite party, accompanied by the copies of application, affidavits and documents ;

(c) the opposite party shall file a reply accompanied by the affidavits and documents, if any, after serving a copy of the same to the applicant ;

(d) the applicant may file a rejoinder, if any, after serving the copy to the opposite party ;

(e) the Rent Court shall, then, fix a date of hearing and may hold such summary inquiry as it deems necessary.

In every case, before the Rent Court and Rent Tribunal, the evidence of a witness shall be given by affidavit.

But whenever it is necessary, the Court may call a witness for examination or cross-examination.

The provisions of Code of Civil Procedure, 1908 will apply for the service of summons.

The Rent Court should not ordinarily allow more than 3 adjournments.

All the applications under clauses (a), (b), (c), (e), (f) and (h) or sub-section (2) of Section 21 shall be decided within 90 days of filing of application to the Rent Court.

Applications under clauses (d) and (g) of sub-section (2) of Section 21 shall be decided within 30 days of filing of application to the Rent Court.

Powers of Rent Court and Rent Tribunal

Section 37 of the Act deals with powers of both Rent Court and Rent Tribunal.

For the purpose of discharging their functions they have same powers as vested in a civil Court under the provisions of Code of Civil Procedure, 1908.

The powers are :—

(1) (a) summoning and enforcing the attendance of any person and examining him on oath ;

(b) requiring the discovery and production of documents ;

(c) issuing commission for examination of witnesses or documents ;

(d) issuing commission for local investigation ;

(e) receiving evidence on affidavits ;

(f) dismissing an application on appeal for default or deciding it *ex parte* ;

(g) setting aside any order of dismissal of any application or appeal for default or any other order passed by it *ex parte* ;

(h) execution of its order and decisions under this Act without reference to any civil Court ;

(i) reviewing its orders and decisions ; and

(j) any other matter as may be prescribed.

(2) Any proceedings before the Rent Court or Rent Tribunal shall be deemed to be a judicial proceeding.

(3) For the purpose of holding any inquiry or discharging any duty, the Rent Court may —

(a) enter and inspect or authorise any officer to enter and inspect, any premises at any time ;

(b) require any person to produce for his inspection such books or documents relevant to the inquiry.

(4) The Rent Court may appoint one or more person as an assessor or valuer to advise it in the proceeding before it [Section 37(4)].

(5) The Rent Court has power to correct any clerical or arithmetical mistake in any order passed by it.

(6) The Rent Court may exercise the power of a Judicial Magistrate of First class for the recovery of the fine.

(7) Any order made by the Rent Court or an order passed in appeal or revision on review under this Chapter shall be executable by the Rent Court as a decree of a civil Court and for this purpose, the Rent Court shall have the powers of a civil Court.

(8) The Rent Court may set aside any order passed *ex parte* if the aggrieved party files an application of satisfies if that notice was not duly served or that he was prevented by any sufficient cause from appearing when the case was called for hearing.

(9) Every order passed by the Rent Court shall be final and shall not be called in question in any original suit, application or execution proceedings.

Appeal to Rent Tribunal

Section 38 of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 deals with appeal to Rent Tribunal and other related matters.

(1) An appeal will lie to the Rent Tribunal from every final order passed by the Rent Court. Such an appeal should be filed within a period of 30 days from the date of final order.

(2) After receiving appeal application, Rent Tribunal will serve notice with the copy of appeal and fix a day for hearing not later than 30 days from the date of service of notice of appeal. It should be disposed of within 120 days from the date of service of notice of appeal on the respondent.

(3) Whereas it is necessary, the Rent Tribunal may allow documents at any stage of the proceedings. But, it can be exercised only once during the hearing.

(4) The Rent Tribunal has power to pass interlocutory order during the pendency of the appeal.

(5) Rent Tribunal may confirm, set aside or modify the order passed by a Rent Court. Its decision will be final and no further appeal or revision shall lie against the order.

(6) The Principal Rent Tribunal has power to transfer any case from one Rent Court to any other Rent Court for disposal.

(7) The Rent Court to whom the case has been transferred proceed from the stage at which it was transferred.

Execution of the order

The modes execution of order by the Rent Court is mentioned under Section 39 of this Act.

The Rent Court will execute a final order by adopting any one of the following modes by —

(a) delivery of possession ;

(b) attachment and sale of the movable or immovable property of the opposite party ;

(c) attachment of any one or more bank accounts of the opposite party ;

(d) appointing any advocate or any other competent person for the execution of the order.

The Rent Court shall conduct the execution proceedings in relation to a final order in summary manner and dispose of the application for execution made under this section within 30 days from the date of service of notice on opposite party.

CHAPTER - VIII

Miscellaneous

All other matters relating tenancy are covered under this Chapter under Sections 40 to 47.

Section 40 says no civil Court should entertain any suit or proceeding in so for as it relates to the provisions of this Act. The Rent Court will have jurisdiction only to tenancy agreement submitted to it as per First Schedule. The question of title and ownership of premises is beyond its jurisdiction.

Section 41 is relating to Court-fees.

According to Section 42, all members of Rent Court, Rent Tribunal and Rent Authority are considered as public servants.

The appointment and salary of officers of Rent Court or Rent Tribunal or the Rent Authority are dealt with under Section 43.

Repeal of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960

(Tamil Nadu Act 18 of 1960)

The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, repeals the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 under Section 47.

The Tamil Nadu Regulation of Rights and Responsibilities of Landlord and Tenants Rules, 2019 was passed in 2019 and it came into force on 22nd February, 2019.

CHAPTER IX

THE TAMIL NADU LAND REFORMS (FIXATION OF CEILING ON LAND) ACT, 1961

The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 is an important piece of agrarian Legislation. This Act fixes a ceiling on the holdings of agricultural lands and provides for the acquisition of surplus lands and also deals with other matters connected therewith in the State of Tamil Nadu.

THE OBJECT OF THE ACT :

The broad object of this enactment has been spelt out in its Preamble itself. It is pointed out in the Preamble, that the Constitution of India, under Article 39(*b*) and (*c*) lays down that the State should in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. It is pointed out in (*State of Tamil Nadu* vs *Narendra Dairy Farms (P) Ltd.* AIR 1987 Madras 161) that "the land ceiling Act had been enacted to give effect to the Directive Principles of State Policy in Article 39 of the Constitution. Article 39 deals with the State directing its policy towards securing ownership and control of material resources of the community with a view to secure equitable distribution in such a manner as to subserve common good in order that concentration of wealth and means of production to common detriment in the hands of a few did not result".

The Preamble further says, that there is limited area of agricultural land is available in the State and there is great disparity in the ownership of agricultural land. The lands are concentrated in certain persons. Therefore, the disparity must be reduced. For this purpose, it is necessary to fix a ceiling on the agricultural holdings and acquire the agricultural land in excess of the ceiling area and it must be distributed to the landless and other persons among the rural population. Such distribution will subserve the common good, increase agricultural production and promote social and economic justice. So, it is clear that this Act has been enacted in order to subserve the common good, increase agricultural production and promote social and economic justice, land ceiling has to be fixed and excess land to be acquired and it should be distributed to the landless. The fixing of land ceiling, acquisition of excess land and its distribution to the landless rural population are the prime objects of this Act.

HISTORICAL BACKGROUND :

The State of Tamil Nadu took suitable Legislative measures step by step to implement the policies advocated by the Centre and recommended by the Planning Commission of India. In fact Legislative measures in that direction had been on the anvil in our State since 1948. The Madras Cultivating Tenants Protection Act entered the Statute Book in 1955 seeking to protect the tenants against the eviction as a follow up of the Thanjavur Tenants and Pannayals (Protection and Fair Rent) Act, 1952, fixing the quantum of rent payable by a tenant to the land owner. The Tiruchirapalli Kaiaeruvaramdar and Mattuvaramdar Act, 1958 defining the conditions of employment of Kaiaeruwaramdar and Mattuvaramdar were measures taken in the direction of protecting the rights of such persons.

The Act of 1961 which takes retrospective effect from 6th April 1960 is a self-contained Code. This Principal enactment fixed a ceiling on the holding of agricultural land and provided for the acquisition of surplus land. The ceiling area for a person and for a family consisting of not more than five members was 30 standard acres. The implementation of the Act practically commenced on 2nd October 1962. The Supreme Court in its judgment on March 9, 1964 in (*Krishnasamy* vs *State of Madras*) (AIR 1964 SC p 1515) struck down the entire Act because Sections 5 and 50 violated Article 14 of the Constitution of India. On June 20, 1964 the Parliament in exercise of its power, passed the Constitution (17th Amendment) Act 1964, including the

Act in the Ninth Schedule of the Constitution. From July1964, the Act is being implemented vigorously. The provisions of the Tamil Nadu Land Reforms Act were amended subsequently from time to time. The Amendment Act 1970, the Act of 41/71, Amendment Act, 10/72, Amendment Act 20/72, Amendment Act 37/72, Amendment Act 39/72, Amendment Acts 7/74, 10/74, 11/74, 15/74, 32/74, Amendment Act 11 of 1975, Act 27/1975, Act 25 of 1978 were passed subsequently relating to ceiling area, compensation etc. Further, it was amended in the years 1979, 1980, 1981, 1984, 1986, 1987, 1988, 1989, 1994 and 1996.

SALIENT FEATURES OF THIS ACT:

The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 was introduced by the Government of Tamil Nadu with intent to reduce the vast disparity prevailing between a few big block land holders and large number of landless poor peasants.

(1) This Act is a self-contained Code and deals with ceiling on land holding in a comprehensive manner.

(2) The ceiling area under this Act is 15 standard acres in the case of every family consisting of not more than five members and subject to the maximum of 30 acres, where the family consists of more than 5 members. Previously it was 30 standard acres for a family subject to an overall ceiling of 60 standard acres. The ceiling area is reduced to 15 acres now – Section 5(1).

(3) Initially, trusts were exempted from the operation of the Act. Later, a distinction was introduced in 1972 between public and private trusts and in public trusts between religious trusts of a public nature and charitable or educational Trust as Trust of public nature. Lands held by religious trusts of a public nature or by religious institutions are exempted from the operation of the ceiling area – Section 2. Land owned by a private Trust is deemed to be land owned by the beneficiaries under the Trust.

(4) The term family is defined under Section 3(14) of the Act as comprising the wife or husband - minor sons, unmarried daughters and minor grandsons and unmarried grand daughters in the male line whose parents are dead.

(5) This Act fixes ceiling area for the educational institutions separately under Section 5(1)(*c*) ranging from 10 acres to 40 standard acres.

(6) This Act not only fixes the ceiling area but also prohibits to hold land in excess of the ceiling area on or from the date of commencement of the Act-Section 6.

(7) Elaborate procedure has been laid down under Section 8 for furnishing return by a person holding land in excess of the ceiling area. Further, it lays down procedures to be followed in the preparation and publication of draft and final statements.

(8) Section 22 declares that any transfer or partition made on or after the date of commencement of the Act, but before the Notified date is void whether such transaction is *bona fide* or not.

(9) The Tamil Nadu Land Board has been constituted under Section 24 vested with power of deciding the question of future acquisition of land interspersed among or contiguous to any plantation.

(10) Sections 37A and 37B enable industrial or commercial undertakings or public Trust to hold excess land for their expansion.

(11) Section 50 deals with the question of determination of amount payable for the land acquired by the Government. For the surplus lands Notified before 27th October, 1978 compensation was being determined on the basis of the net annual income from the surplus lands. But after 17th October 1978 the amount payable is determined based on the Land Revenue assessment.

(12) Special provisions have been made under Chapter VIII for the cultivating tenants who are holding land in excess of ceiling area of 5 standard acres.

(13) Exemptions are granted to certain categories of land from the operation of this Act under Chapter IX.

(14) To speed up implementation of the land reform measures, provisions have been made for the constitution of the Tamil Nadu Land Reforms Special Appellate Tribunal under Article 323 B of the Constitution of India and vested with power of hearing appeals and revisions against the orders passed by the Land Tribunals. The Land Tribunals are constituted under Section 76 of the Act.

(15) As in the other tenancy Laws, the jurisdiction of the Civil Courts is ousted with respect to any matter which is by or under this Act required to be decided or dealt with by the authorized officer, the Land Board, the Land Commissioner, the Land Tribunal or the Special Appellate Tribunal – Section 77G.

(16) The provisions have been made under Chapter XIII for the disposal of the land acquired by the Government.

(17) Section 96 clarifies that the ceiling area is not affected because of decrease in number of members of the family.

DEFINITIONS UNDER THE ACT :

Section 3 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 deals with definitions of various terms. This Section defines as many as 47 terms. Let us consider some important definitions here.

Clause 1 of Section 3 defines the term '**agriculture**'. This definition is similar to definition of agricultural land under the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971. The term 'agriculture' includes (*a*) horticulture, (*b*) the raising of crops, grass and garden produce; (*c*) the use by an agriculturist of land held by him, or part thereof for grazing; (*d*) the use of any land for the purpose of raising manure crops; (*e*) dairy farming; (*f*) poultry farming; (g) livestock breeding and (*h*) growing of trees.

Section 3(10) defines term '**cultivating tenant**'. This definition is similar to the definition under the Tamil Nadu Cultivating Tenants Protection Act, 1955. According to this Act, 'Cultivating Tenant' —

(*i*)means a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied; and

(*ii*) includes—

(*a*) any such person who continues in possession of the land after the determination of the tenancy agreement, or

(*b*) the heir of such person, if the heir contributes his own physical labour or that of any member of his family in the cultivation of such land, or

(*c*) a sub-tenant if he contributes his own physical labour or that of any member of his family in the cultivation of such land ; but

(*iii*) does not include a mere intermediary or his heir.

This definition includes apart from a person or his family member, a tenant after the determination of the tenancy, his heir, a sub-tenant also (for further detailed discussion refer the chapter on the Tamil Nadu Cultivating Tenants Protection Act 1955).

Section 3(14) defines the term **'family'**.

Family in relation to a person means, the person, the wife or husband as the case may be, of such person and his or her –

(*i*) minor sons and unmarried daughters ; and

(*ii*) minor grand sons and unmarried grand daughters in the male line, whose father and mother are dead.

In this connection this section speaks about persons governed by the Hindu Law and persons governed by any other law.

'Family' in relation to a person means the person, the wife or husband as the case may be, of such persons and his or her (*i*) minor sons and unmarried daughter and (*ii*) minor grandson and unmarried granddaughters in the male line, whose father and mother are dead.

In the case of persons governed by Hindu Law, however, minor son or minor grandsons shall not include persons who are parties to a partition which has been taken place or preliminary partition decree has been passed. In the case of unmarried daughter and grand daughter it will not include unmarried daughter or unmarried grand daughters (*i*) in whose favour any land has been voluntarily transferred by either of whose parents or grand parents on account of natural love and affection or (*ii*) in whose favour a preliminary decree for partition has been passed before the notified date.

In the case of persons governed by any other than Hindu Law, 'minor sons', 'unmarried daughters', 'minor grandsons', and 'unmarried granddaughters' shall not include 'minor sons', 'unmarried daughters', 'minor grandsons' and 'unmarried granddaughters' —

(*i*) in whose favour any land has been voluntarily transferred by either of whose parents or grandparents on account of natural love and affection ; or

(*ii*) in whose favour a preliminary decree for partition has been passed before the notified date.

The term **'intermediary'** is defined under Section 3(21) of this Act. According to this, intermediary is any person who, not being an owner or a possessory mortgagee, has an interest in land, as is entitled by reason of such interest, to possession thereof, but has transferred such possession to others. This definition is similar to the definition under Section 2(3) of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969.

The term land means **'agricultural land'** that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes forest land, pasture land, plantation and tope, but does not include house site or land used exclusively for non-agricultural purposes – Section 3(22).

The term **'orchard'** means an enclosure or assemblage of fruit or nut bearing trees, constituting the main crop therein, whether of spontaneous or artificial grounds, but does not include trees on such lands as are not within or adjunct to such enclosure or assemblage. The explanation to this clause says the expression 'fruit or nut bearing trees shall not include plantain tree – Section 3(32). This explanation was added in the year 1974. Plantain is not a fruit bearing tree as contemplated in Section 3(32) of the Act. Once it is held that plantain is not a fruit bearing tree, it necessarily follows that the enclosure wherein the crop is raised will not be an orchard – (*State of Madras* vs *Ramani Iyer* AIR 1975 Madras 26; *Govindasamy Padayachi* vs *Suryanarayanaswami* (1971) 84 Madras LW 369.)

The term **'public trust'** and **'religious institutions'** are defined as follows: 'Public trust' means a Trust for a public purpose of religious, charitable or of an educational nature; 'religious institution' means any (*i*) temple, (*ii*) math; (*iii*) mosque; or, (*iv*) church which is dedicated to, or for the benefit of, or used as of right by the public as a place of religious worship. – Section 36 B

This Act which seeks to fix the ceiling on agricultural land holdings exempts the lands held by existing religious institution or religious Trust of public nature. Section 2 of the Act deals with this aspect. For the purpose of this section – (*a*) where a public Trust in existence on the date of commencement of this Act, has been created both for the *public purpose of a religious nature* and for any other public purpose ; or (*b*) where the *income* from a public Trust in existence on the date of the commencement of this Act is appropriated both for a public purpose of a religious nature and for any other public purpose, such public Trust shall be deemed to be a religious Trust of a public nature.

What is necessary for the purpose of getting exemption under this Act, is it must be a religious Trust of a public nature. So it clearly excludes the institution which is purely charitable one. To bring the matter within the ambit of 'religious Trust of a public nature', the dedication of the property must be for religious purposes. The link between the practice of religion and the utilisation of the property must be evident. The utilisation of the income from the

property must be for the practice of the religion in question or otherwise for religious purposes. In order to claim total exemption from this Act, it must be a religious Trust of a public nature. May be, there could be cases where the Trust could be both religious as well as charitable. Such a contingency is contemplated and provided for under Section 3(2) of the Act, when it says that the public Trust could be both for a public purpose of a religious nature and for *any other public* purpose. But the presence of a religious purpose – may be along with other purposes – is a condition precedent so as to attract the total exemption under Section 2(1) of the Act (*Hajia Aiysha Nachiyar Kalvi Arakattalai* vs *State of Tamil Nadu* (1979) 1 MLJ 366.) From this it is evident that it may be either for religious purpose only or may be religious purposes along with any other public purpose which may include charitable purpose.

It has been held in (*Vedapadasala Trust* vs *State of Tamil Nadu*) (1981) 1 MLJ 225, that the imparting of instruction in Vedas and Agamas is certainly of religious nature. Therefore, whenever a Trust which is of a public nature provides for the imparting of instructions in Vedas and Agamas, certainly that will be of a religious Trust of a public nature and the imparting of instructions in Vedas and Agamas cannot be anything other than of a religious nature. Further, it is pointed out in (*Rajammal* vs *Authorised Officer* (1984) 1 MLJ 270) that if imparting of instructions in Vedas and Agamas could be characterised as of religious nature, recitals of Vedas during Adi Pooram festival in the temple are nothing but culminations of such learnings, a sort of practice by way of recitals of what has been learnt and hence they cannot but be religious in nature.

The Trust which has been created with the object of running a madarasa wherein religious instructions are to be imparted to the Muslim boys and girls is a public Trust of a religious nature and it will therefore, come under the exemption provided under Section 2 of the Act. (*Vavallavvai Dharmam* vs *State of Tamil Nadu* (1979) II MLJ 121.) Likewise, where the object of creating Trust is to promote spiritual education and knowledge through the medium of Arabic language, then it should be considered as a religious Trust of a public nature and is entitled to exemption – (*Dharul Ulam Madarasa* vs *State of Tamil Nadu* AIR 1982 Madras 128.) To make a charitable Trust a religious Trust as well, it must be shown that the object of the Trust had some nexus or connection with the temple or its affairs or the worship or the conduct of the festivals therein. Otherwise, it will be considered as a Trust of the charitable nature only.

FIXATION OF CEILING ON LAND HOLDINGS

Section 5 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 is an important section. It fixes the ceiling area. Section 5(1)(*a*) and (*b*) deals with ceiling area for a family. Sub-section 1(*c*) deals with ceiling area for the institutions.

The provisions of Section 5 may be summarised as follows :

1. A family is one which consists of a person, his wife and his minor sons and unmarried daughter and their minor grandsons and unmarried grand daughters in the male line whose father and mother are dead.

2. The ceiling area for a family consisting of not more than 5 members is 15 standard acres [Section 1(*a*)].

3. The ceiling area of a family consisting of more than 5 members is 15 standard acres together with an additional 5 standards acres for every member of the family – Section 5(1)(*b*).

4. The total extent of the land held by a family in no case should exceed 30 standard acres [Section 5(5)].

5. For the purpose of fixing the ceiling area of the family, all the lands held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be held by the family – Section 5(1).

6. Where the stridhana land held by any female together with the other lands held by the family is in excess by 15 standard acres, then the female member is entitled to hold stridhana land not exceeding 10 standard acres in addition to the extent of land which the family is entitled to hold under Section 5(1).

7. But where stridhana land held by a female member is included in the extent of land which the family is entitled to hold, and in case where the extent of so included is (*a*) 10 or more than 10 standard acres, she shall not be entitled to hold any stridhana land in addition to the extent so included or (*b*) less than 10 standard acres, she may hold in addition to the extent so included an extent of stridhana land, wherein together with the extent so included, shall not exceed 10 standard acres.

8. Where the extent of stridhana land held under clause (*a*) by any female member of a family consisting of more than 5 members – (*a*) is 5 or more than 5 standard acres, she shall not be deemed to be a member of that family for the purposes of clause (*b*) of sub-section (1) ; or (*b*) is less than 5 standard acres

the additional extent of 5 standard acres allowed under clause (*b*) of sub-section (1) shall be reduced by the same extent as the extent of stridhana land so held.

Illustrations

(*a*) An undivided Hindu family consists of the husband A, his wife and his three sons B, C and D and the wife of B and grandsons E and F. B is a major and C and D are minors. E and F are the minor sons of B. The extent of land held by the undivided Hindu family is 40 standard acres, that is to say, A's share and the share of his sons in the land held by the undivided Hindu family is 10 standard acres each. A's wife has 15 standard acres of stridhana land and B's wife has 10 standard acres stridhana land.

For the purpose of ceiling, A's family and B's family will each constitute a separate unit [Section 3(14)].

A's family consists of himself, his wife and his minor sons C and D. If the share of A in the land held by the undivided Hindu family, namely, 10 standard acres is included within the 15 standard acres allowed under sub-section (1) of Section 5, the wife's stridhana land to the extent of 5 standard acres may be included to make up 15 standard acres [Section 5(4)]. The wife can hold in addition 5 standard acres as stridhana land. All the members of A's family will therefore be together entitled to hold 20 standard acres and the remaining 25 standard acres will be treated as surplus land.

B's family consists of himself, his wife and his minor sons E and F. If the stridhana land of B's wife, namely, 10 standard acres is included within the 15 standard acres allowed under sub-section (1) of Section 5, the share of B and his sons in the land held by the undivided Hindu family to the extent of 5 standard acres may be included to make up 15 standard acres [Section 5(4)]. All the members of B's family will therefore be together entitled to hold 15 standard acres and the remaining 5 standard acres will be treated as surplus land.

(*b*) A family consists of husband and his wife. The husband is a member of an undivided Hindu family and his share in the land held by the undivided Hindu family is 10 standard acres. The wife has stridhana land of 10 standard acres. If the entire stridhana land of 10 standard acres held by the wife is included within the 15 standard acres allowed under sub-section (1) of Section 5, then, an extent of 5 standard acres of the share of the husband in the undivided Hindu family may be included to make up 15 standard acres. 5 standard acres will be treated as surplus land and the wife is not entitled to hold any additional extent of stridhana land [Section 5(4)].

But, if the 10 standard acres which is the share of the husband in the undivided Hindu family is included within the 15 standard acres allowed under sub-section(1) of Section 5, then an extent of 5 standard acres of stridhana land of the wife could also be included to make up 15 standard acres. The wife may retain additional 5 standard acres of stridhana land [section 5(4)]. There will be no surplus land.

(*c*) A Muslim family consists of the husband, his wife and his two minor sons. The wife has 15 standard acres of stridhana land and the minor sons have no property. The husband has 25 standard acres. If the entire extent of land which the family is entitled to hold under sub-section(1) of Section 5 consists of the land owned by the husband only, the wife can hold additional 10 standard acres [Section 5(4)]. The remaining 15 standard acres will be treated as surplus land.

(*d*) A Christian family consists of the husband, his wife and his two minor sons. The husband and the minor sons have no property. The wife has stridhana land of 20 standard acres. The family can retain 15 standard acres. The remaining 5 standard acres will be treated as surplus land and the wife is not entitled to hold any additional extent of stridhana land [Section 5(4)].

(9) The ceiling area in the case of the institutions mentioned in column(1) of the Table below and in existence on the date of the commencement of this Act, shall be the extent specified in the corresponding entry in column (2) thereof.

THE TABLE		
	(1)	(2)
1.	Any College affiliated to or recognised by any University under any Law or Rule relating to education.	40 (Forty) standard acres.
2.	Any High School or equivalent school recognised by the Govt. or University under any Law or Rule relating to education.	20 (Twenty) standard acres.
3.	Any Elementary School or Higher Elementary School or other equivalent institution recognised by the Government under any law or Rule relating to education.	10 (Ten) standard acres.

4.	Any Students' Hostel	25 (Twenty-Five) standard acres.
5.	Any Polytechnic Institution.	25 (Twenty -Five) standard acres.
6.	Any Agricultural School.	25 (Twenty-Five) standard acres.
7.	Any Orphanage	25 (Twenty-Five) standard acres.

(10) The extent of the land mentioned above must be held by such institutions on the date of the commencement of this Act.

(11) The ceiling area in the case of a public Trust of a charitable nature shall be 5 standard acres – Section 5(*d*).

(12) The land owned by a private Trust shall be deemed to be land owned by the beneficiaries under the private Trust and each such beneficiary shall be deemed to be owner of the land to the extent of the share of his beneficial interest in the said Trust.

(13) Where the income from a *public Trust* is substantially appropriated for the benefit of the founder of the Trust or his heirs or of the family of the founder or of his heirs, such Trust shall be deemed to be a private Trust notwithstanding the terms of the Trust – Explanation to clause 36(A) of Section 3.

(14) The land held by the public Trust referred to in the explanation to clause 36A of Section 3 shall be deemed to be held by the founder of the Trust or his heirs or the family of the founder or of his heirs.

(15) The date of the commencement of the Act is 15th February 1970 and the notified date is 2nd October 1970.

BASIS OF CALCULATION OF THE EXTENT OF LAND HELD BY THE FOUNDER OF A PUBLIC TRUST

Section 6 of the Tamil Nadu Reforms (Fixation of Ceiling on Land) Act, 1961 speaks about the provision where the founder of Trust reserves an interest for himself and the basis of calculation of the extent of such land by the Authorised Officer. Where under the terms of the public Trust, the founder of such Trust reserves any interest either in the land or in the income from such

land for himself or for any other person, the Authorised Officer will find out total extent of the land and the extent of land reserved for the founder and so also the income from the land and make a declaration. The extent so declared shall cease to be the public Trust property from the date of such declaration but shall be subject to any other liability that may be subsisting on such land.

CEILING ON HOLDING LAND

Section 7 of the Act declares the very object of this enactment. It says, on and from the date of the commencement of this Act, no person shall be entitled to hold land in excess of the ceiling area.

As we have seen early, the commencement of the date is 15th February 1970 and the notified date is 2nd October 1970. Even though principal enactment was passed in 1961, the Act was amended in the year 1970 and it prescribed the date of the commencement as 15th February 1970. Though under Section 7 of the Land Ceilings Act, it is provided that no person shall, on and from the date of commencement of the Act, hold lands in excess of the ceiling area, there is no provision for any automatic vesting of the surplus land in the Government. There is an elaborate machinery provided under the Act to compute the ceiling and to declare surplus. Under Section 18(3), only on the publication of the Notification that under Section 18(1) the surplus lands specified in the Notification shall be deemed to have been declared as acquired for a public purpose and vest in the Government free from all encumbrances with effect from the date of such publication and the right, title and interest of all persons in such lands with effect from the said date, be deemed to have been extinguished – (*State of Tamil Nadu* vs *Narendra Dairy Farms (P) Ltd* 1987 Madras 161.)

PREPARATION AND PUBLICATION OF STATEMENT

Sections 8 to17 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 deal with furnishing of return, collection of information, preparation and publication of draft and final statements and other related matters.

1. FURNISHING OF RETURN BY PERSON HOLDING LAND IN EXCESS OF THE CEILING AREA : Section 8 of the Act speaks about the furnishing of a return by the person who is holding land in excess of the ceiling area. The person who is holding land in excess of the ceiling area should furnish a return within thirty days from the Notified date to the Authorised Officer in whose jurisdiction the land is situated. The return should contain the following particulars :—

(*i*) particulars of all the land ;

(*ii*) particulars of the members of the family and of the stridhana land held by the female member of the family ;

(*iii*) particulars of any interest either in the land held by a Trust or in the income from such land reserved in his favour or in favour of any member of his family ;

(*iv*) particulars of land —

(*a*) interspersed among plantation, or

(*b*) contiguous to any plantation,

(*v*) particulars of the encumbrances if any, with the name and address of the creditor ;

(*vi*) particulars of pending litigation if any, respecting the land ;

(*vii*) particulars of the land which such person desires to retain within the ceiling area and the land which he desires to be declared as surplus land ;

(*viii*) particulars of land held by tenant, if any and the name and address of such tenant ; and

(*ix*) such other particulars as may be prescribed.

2. WHO SHOULD FURNISH THE RETURN ?

According to explanation to Section 8 (*a*)in the case of an individual the return should be furnished by him or any person on his behalf, (*b*) in the case of minor, lunatic etc, it should be by the guardian or manager, (*c*) in the case of a company, the return should be furnished by any competent person. In the case of the family, the return should be furnished by the person who is in management.

3. COLLECTION OF INFORMATION BY THE AUTHORISED OFFICER :

Where a person who is bound to furnish the return, fails to furnish the return or furnishes incorrect or incomplete return, the Authorised Officer may by notice require such person to furnish return or the additional particulars within the specified time – Section 9(1).

Section 9(2) empowers the Authorised Officer to obtain particulars either by himself or through some agency where, any person fails to furnish the

return or the additional particulars inspite of the notice by the Authorised Officer. After obtaining the particulars, he will give an opportunity to the person to make any representation. In case the Authorised Officer finds from the return, that the person concerned desires to hold any land interspersed among plantation or any land contiguous to any plantation, he will forward a copy of return to the Land Board to grant permission under Section 31.

4. PREPARATION AND PUBLICATION OF DRAFT STATEMENT

Section 10 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 is relating to the preparation and publication of draft statement as regards lands in excess of the ceiling area. This Section is lengthy one consists of 5 clauses gives all the details of procedures to be followed by the Authorised Officer in preparing and publishing the draft statement.

On the basis of the return furnished by person or information collected by the Authorised Officer, under Sections 8 and 9 after making an enquiry if necessary, the Authorised Officer will prepare a draft statement with respect to the land held in excess of the ceiling area – Section 10(1). The draft statement shall contain the following particulars (which are similar to particulars contained in the return under Section 8) namely,

(*i*) the name and address of the person ;

(*ii*) particulars of all land held by such person and the total extent of such land ;

(*iii*) particulars of the members of the family and of the stridhana land held by female members ;

(*iv*) particulars of any interest either in the land held by a Trust or in the income from such land reserved in his favour or in favour of any member of his family ;

(*v*) particulars of land —

(*a*) interspersed among plantations, or

(*b*) contiguous to any plantation and land to which the person desires to hold for extension or ancillary purposes of the plantation.

(*vi*) particulars of encumbrances and the name of the creditor ;

(*vii*) particulars of the land which such person desires to retain within the ceiling area ;

(*viii*) the extent of the ceiling area of the person ;

(*ix*) particulars of the land which may be comprised within the ceiling area ;

(*x*) particulars of the land held by the tenant and his name and address ;

(*xi*) particulars of the proposed land to be declared as surplus land; and

(*xii*) such other particulars as may be prescribed.

For the purpose of calculating for the first time, the Authorised Officer will take into account only those members of the family who are alive on the Notified date. But for the purpose of calculating the ceiling area of such family for the second time or for subsequent time, he will take into account only those members of that family who are alive on the date of the preparation of the draft statement. Under Section 10(2), the Authorised Officer has to take into account only those members of the family as are covered by the definition of Section 3(14) of the Act – *(M.K.Harihara Iyer* vs *Authorised Officer, Land Reforms* AIR 1990 SC 907). The same procedure is followed for the purpose of calculating the ceiling area of *any other family.*

Clauses (3) and (4) of Section 10 speak about the land to be retained by the person within his ceiling area. If any person fails to specify his desire to retain the kind within the ceiling area, Authorised Officer himself as far as practicable specify in the draft statement, the land which is capable of easy and convenient enjoyment. If any person has specified the particulars of the land which he desires to retain within his ceiling area, the Authorised Officer, will as far as practicable declare the same land as comprised within his ceiling area. This declaration is subject to the conditions mentioned in the proviso clauses. (1) In the opinion of the Authorised Officer, the utility of any land held by any person has been diminished by any wilful act of such person, he will declare such land as comprised within his ceiling area. (2) Likewise, he will declare the share of any person in the land held by an agricultural company, a co-operative society or a mortgage bank as comprised within the specified area, (3) The Authorised Officer will see that the proposal to declare as surplus area is capable of easy and convenient enjoyment.

In (*Ramasamy Gounder* vs *Authorised Officer* (1977) 1 MLJ 241) it is pointed out that the purpose of the Act in this connection "under Section 19(4) of the Act, if any person has specified the particulars of the land which he desires to retain within his ceiling area, the Authorised Officer shall as far as practicable but subject to the provisions of the Act, declare the same land as comprised within his ceiling area. The very purpose of agrarian reform is to

slice off the extent of land from the land holders for the avowed and benevolent purpose of passing them as to the landless poor, so that they could easily and conveniently enjoy it. The phrase "capable of easy and convenient enjoyment" in the third proviso to sub-clause (4) has a special annotation. Otherwise, every land holder would have the choice to give such useless land and probably inaccessible land or land which cannot easily or conveniently be enjoyed under clause (4) and the Authorised Officer would in equity be bound to accept the same and leave the rest. This does not appear to be the intendment of either the sub-clause or the object of the enactment either. The easiness and convenience referred to in the third proviso in sub-clause (4) has reference only to the State whose object is to pass on such lands taken over by it, to others who do not own land, so that they could easily enjoy the same. The very purpose and object of the enactment would be lost if the holder's choice has to prevail".

Section 22 of the Act says, that any transfer or partition *bona fide* executed or not, is liable to be declared void by the Authorised Officer, if he finds that the transfer defeats any of the provisions of the Act. Hence, clause 4A imposes the duty upon the Authorised Officer to include such land within the ceiling area of the transfer or the person effecting the partition, as if no such transfer or partition had taken place.

Where the transfer of any land has been declared to be void under Section 22 and where the extent of the land so transferred is in excess of the ceiling area of the transferor, the land so transferred shall be included within the ceiling area of the transferor in the following order of preference:—

(*i*) firstly, land transferred to a person who was landless immediately before the date of such transfer and who was not related to the transferor or any member of his family ;

(*ii*) secondly, land transferred to a cultivating tenant who was cultivating that land immediately before the date of such transfer ;

(*iii*) thirdly, land transferred to a person who was not related to the transferor or any member of his family; and

(*iv*) land transferred to others.

Sub-section 5 of Section 10 lays down the procedures to publication of the draft statement and service thereof on persons concerned, the Tenants, Creditors and all other persons who in the opinion of the Authorised Officer, are interested in the land in which such draft statement relates. The Authorised Officer will publish a draft statement and send a copy of it to the persons concerned as

mentioned above. The Authorised Officer is under the duty to consider any objection received within time from such persons. The Authorised Officer after giving the objector a reasonable opportunity of being heard and of adducing evidence will pass necessary orders.

Section 11 empowers the Authorised Officer to decide questions of title of a person which are not finally determined and to pass orders. In case, the decision of a question involves a substantial question of law or fact, he will refer the matter to the Land Tribunal.

6. PUBLICATION OF FINAL STATEMENT

Section 12 of the Act, speaks about the publication of the final statement by the Authorised Officer. The Authorised Officer after the disposal of the objection if any and after passing the order will make necessary alterations in the draft statement and declare the surplus land held by each person. Thereafter, the Authorised Officer will publish a final statement specifying therein the entire land held by the person, *the land to be retained by him* within the ceiling area and *the land to be declared to be surplus land* and such other particulars. He will send the copies to the persons concerned. Such a statement will be the conclusive evidence of the facts stated therein.

In calculating the extent of land held by any person, the Authorised Officer will exclude (*a*) the land in respect of which any question of title is pending before a competent Court or the Land Tribunal or the Special Appellate Tribunal or other Authority and (*b*) the land in respect of which the question whether such land could be permitted to be used for the extension or for ancillary purposes, of the plantation in existence on the date of the commencement of this Act in any area is pending before the Land Board (Section 13).

7. RECTIFICATION OF BONA FIDE MISTAKE AND CLERICAL ERROR

Section 15 empowers the Authorised Officer either of his own motion or on the applications of any of the parties to make necessary corrections with respect to *bona fide* mistake that has crept in the final statement. So also he can correct any clerical or arithmetical mistake in regard to any entry in such final statement.

Sections 16 and 17 of the Act speak about possession of land held by any possessory mortgagee and tenant which is in excess of the ceiling area. They will revert back to the possessory mortgagor or land owner as the case may be.

ACQUISITION OF SURPLUS LAND

Section 18 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961 deals with acquisition of surplus land for a public purpose. The Government, after the publication of the final statement will publish a notification to the effect that the surplus land is required for a public purpose. Soon after the publication, the Authorised Officer publish the Notification in every village or town in which any part of the land specified in such Notification is situated. So also he will send the copy of the Notification to the persons concerned, the creditors and persons whose names appear in the final statement. On the publication of the Notification, the land specified in the Notification along with all the things attached to earth will pass to the Government. Clause 3 says what are the things that will pass along with the principal thing. The land together with the trees standing on such land and buildings, machinery, plant, apparatus, wells, filter points or power lines, constructed, erected or fixed on such land and used for agricultural purposes are **deemed to have been acquired for a public purpose** and vested in the Government free from all encumbrances with effect from the date of such publication and all right, title and interest of all persons in such land, will with effect from the said date, be **deemed to have been extinquished.**

In case where there is any crop standing on such land on the date of publication, the Authorised Officer may permit the harvest of such crop by the person who had raised such crop. At any time after the publication of the Notification the Authorised Officer will take the possession of the land.

In this connection the Government may make Rules – (*a*) specifying the classes of tenants who may be allowed to continue in the possession of kind ; and (*b*) permitting any co-operative society or land mortgage bank or any agricultural company to continue in possession of the land notwithstanding anything contained in Sections 5 and 7. Sections 18B and 18C empowers the Government to modify or cancel the Notification in certain cases.

PENALTY FOR FUTURE ACQUISITIONS

Section 20 of the Act, provides that if, as a result of any transfer of land either by sale, gift, exchange, surrender, agreement, settlement or otherwise effected on or after the Notified date, the extent of land held by the transferee exceeds the ceiling area, then the right, title or interest accrued in his favour by virtue of such transfer in the land in excess of the ceiling area shall, as a penalty for the contravention of the provisions of Section 7, be deemed to have been transferred to the Government with effect from the date of such transfer.

Section 7 prescribes that on and **from the date of the commencement of the Act, no person shall be entitled to hold land in excess of the ceiling area.**

If on or after the date of commencement of the Act, any person acquires any land by inheritance or bequest from any person, and it exceeds in the aggregate the ceiling area, he should furnish return within 90 days from the Notified date or from the date of such acquisition whichever is later to the Authorised Officer. So also as a result of marriage or adoption the extent of the land exceeds in the aggregate of ceiling area, the person should furnish a return in the same manner as mentioned above.

WHEN A PARTITION AND TRANSFER IS VALID ?

Section 21 A states that when a partition or transfer is valid. According to Section 21A, where after the 15th day of February 1970 but before the 2nd day of October 1970 – (*a*) any person has effected by means of a registered instrument a partition of his holding or part thereof ; or (*b*) any parent or grandparent has voluntarily transferred any land on account of natural love and affection to any minor son, unmarried daughter, minor grandson or unmarried granddaughter in the male line ; or (*c*) any person has voluntarily transferred any land — (*i*) to any educational institution ; or (*ii*) hospital of public nature solely for the purpose of such institution or hospital, such partition or transfer shall be valid. It is evident from this, that the order to a partition or transfer is to be valid, the following conditions are to be fulfilled.

(1) The transaction must be between the date of the commencement of the Act and the notified date ;

(2) The partition must be by a registered instrument ;

(3) It must be a gift made out of love and affection by the parent or grandparent to any minor son, unmarried daughter, minor grandson or unmarried granddaughter in the male line ;

(4) It must be gift of land to any educational purpose or hospital of a public nature ;

(5) The transaction may be a partition or valid transfer ;

(6) In the case of transfer to such educational institution or hospital, this should absolutely vest with the educational institution or hospital and the entire income should be appropriated for the institution or hospital.

In fact Section 21A is in the nature of a proviso to Section 22, which declares the partition or transfer is void if it is made on or after the date of commencement of this Act, but before the Notified date.

WHEN TRANSFER OR PARTITION IS VOID ?

Section 22 mentions circumstances under which a transfer or partition becomes void. It simply says any transfer *bona fide* executed or not, is liable to be declared void by the Authorised Officer, if he finds that the transfer defeats any of the provisions of this Act. The necessary aspects to be taken into considerations are : (1) There must be a transfer like sale , gift, exchange, surrender or settlement or partition ; (2) It must have taken place during the period mentioned in the section ; (3) It must have the effect of defeating any of the provisions of the Act. In [*Authorised Officer* vs *Naganatha Ayyer* (1980) 1 MLJ 34 (SC)], it is pointed out that if these elements are present, the Authorised Officer must declare it as void the transfer. There is no room for importing a fourth principle that the transfer should be 'sham, nominal or bogus'. If any transfer defeats the provisions of the Act, by reducing the extent of surplus land in excess of the ceiling available from any person, such transaction, *bona fide* or not is void in the matter of computation of the permissible area and the surplus area.

LAND BOARD

Chapter V of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 deals with the constitution and functions of the Land Board. Section 24 speaks about the constitution of the Tamil Nadu Land Board.

The Land Board consists of —

(*i*) the Land Commissioner, *ex-officio ;*

(*ii*) the Chief Conservator of Forests, *ex-officio ;*

(*iii*) the Director of Land Reforms, *ex-officio ;*

(*iv*) two non-official members, nominated by the Government.

The member referred above will be the Chairman of the Land Board and shall be a *Gazetted Officer* nominated by the Government. However, he is not entitled to vote.

The term of the office of a member is three years or such shorter period as the Government may fix. He is entitled for re-nomination. If any member mentioned in clause (*d*) of sub-section absents himself from the meetings of the Board for a period of three consecutive months or number of meetings in sub-section is deemed to have vacated his office. A member may resign his office by notice in writing to the Chairman. The vacancy will be filled by fresh nomination.

Functions of the Board are assigned by or under this Act.

ACQUISITION OF LAND INTERSPERSED AMONG OR CONTIGUOUS TO ANY PLANTATION

The Land Board is vested with the power of granting permission for the acquisition of land in excess of the ceiling area where the land is interspersed among or contiguous to any plantation. Where any owner of plantation which is in existence on the date of commencement of this Act, desires to acquire in excess of the ceiling area land which is interspersed among plantations or its contiguous to any plantation for the extension or for ancillary purposes of the plantation, must apply for the permission to the Land Board.

On receipt of the return, the Land Board, after making enquiry and inspection of the land and plantation, if satisfied itself that the land is necessary for extension or for ancillary purposes, grant permission(Section 31). However, the land for which permission was granted should not exceed 20% of the total extent of such plantation.

While deciding the question of granting permission or refusing permission, the Land Board will take into consideration the following matters :—

(*i*) area under plantation and area required for ancillary purposes of the plantation ;

(*ii*) programme for extension of the plantation ;

(*iii*) lands necessary for factories, labour quarters, playgrounds, hospitals, schools and other ancillary buildings ;

(*iv*) such other matters as may be prescribed.

On the following grounds the Land Board may cancel the permission granted under Section 31. The grounds are ;

(*i*) breach of conditions specified by the Land Board ;

(*ii*) use of land for any purposes other than the purpose of extension or for ancillary purposes of the plantation ;

(*iii*) obtaining the permission by fraud or misrepresentation.

The decision of the Land Board in granting or refusing permission under Section 31 or cancelling permission under Section 33 is final and cannot be called in question in any Court.

POWER TO RECTIFY MISTAKES

Under Section 36, the Land Board has power to make necessary correction where a *bona fide* mistake has been occurred. So also it can correct any clerical or arithmetical mistake in its decision.

PERMISSION TO HOLD EXCESS LAND BY INDUSTRIAL OR COMMERCIAL UNDERTAKINGS OR PUBLIC TRUST

Under Section 37 A, the Government can permit any industrial or commercial undertakings to hold or acquire any land in excess of the ceiling area. Similarly Government can permit public Trust created before the Ist March 1972 to acquire or hold any land in excess of the ceiling area for the purpose of any public Trust created after the Ist March 1972, if such public Trust desires to hold or acquire any land for the purpose – (1) establishing any educational institution or hospital ; or (2) expanding any existing educational institution or hospital.

AMOUNT PAYABLE FOR THE LAND ACQUIRED

The Chapter IV of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961, deals with determination of the amount for the land acquired by the Government, claims of mortgagee or charge holder, limited owner and maintenance holder, amount payable to tenants and the mode of payment of amount.

I. DETERMINATION OF THE AMOUNT

Section 50 of the Act, gives detailed procedure for claiming the amount for the land acquired. Every person whose right, title or interest in any land is acquired by the Government shall be paid an amount according to the rate specified in Schedule III (clause 1). The Act uses the term 'amount' and not the term 'compensation'.

1. Any person claiming any amount may within thirty days from the date of the publication of the Notification prefer to claim before the Authorised Officer in the prescribed form.

2. The Authorised Officer will determine the amount at the rate specified in Schedule III and prepare a **draft assessment roll** and publish it with all particulars regarding amount payable.

3. The Authorised Officer then serve it to the concerned persons whose names appeared in the draft.

4. Any person can prefer objections, if any in respect of any entry in the draft in the prescribed manner within 30 days from the date of the publication

5. Thereafter, the Authorised Officer will consider the objections and after giving the parties a reasonable opportunity of being heard and of adducing evidence, will pass necessary order

6. If necessary, the Authorised Officer will make necessary alterations in the light of objections and publish the draft assessment roll finally.

7. If no objection is preferred within the specified time, the Authorised Officer publish the draft assessment roll finally.

8. Every entry in the assessment roll published is final and conclusive evidence of : (*a*) the matters referred therein, (*b*) nature of the interest of the persons name therein and (*c*) the apportionment of the amount among the persons claiming interest in the amount.

9. When the assessment roll has been published finally within the prescribed time Authorised Officer endorse a certificate thereon stating the date of publication thereof.

10. The Authorised Officer may, either of his own motion or on application of any the parties, make necessary correction in regard to mistake crept in any entry in the draft assessment roll or in the final assessment roll.

11. In the similar manner, Authorised Officer may correct any clerical or arithmetical mistake in regard to any entry in the draft assessment roll or in the final assessment roll.

12. In (*Lakshmi Ammal* vs *Assistant Commissioner, Land Reforms* AIR 1992 Madras 27), it is pointed out that a reading of the section is clear enough to indicate that the Authorised Officer must act promptly and conclude the enquiry as regards fixation of final compensation within a very reasonable time. All the periods mentioned in the section, if put together, would indicate that at the worst, the Authorised Officer cannot prolong the matter beyond a period of six months.

II. CLAIMS OF MORTGAGEE, CHARGE HOLDER, LIMITED OWNER AND MAINTENANCE HOLDER IN SURPLUS LAND

Sections 51, 52 and 53 deal with the claims of these persons. Section 51 deals with claims of mortgagee or charge holder on surplus land. According to this Section, where any surplus land acquired is subject to a mortgage or charge subsisting on the date of acquisition, the mortgagee or the charge holder,

where the amount due to him can be fixed by agreement, be paid such amount. Where no such agreement can be reached, the mortgagee or the charge holder should within 60 days from the date of acquisition prefer a claim in the prescribed manner.

Where there are more claimants than one, the Authorised Officer will settle the order according to the provisions of the Transfer of Property Act. However, where it involves substantial question of law or fact, he will refer the claim to the Land Tribunal for decision.

Section 52 deals with claims of the limited owner on surplus land. Where any surplus land acquired is held by a limited owner on the date of acquisition, the amount payable in respect of such surplus land under Section 50 will be kept in deposit before the prescribed authority. The Authorised Officer will direct payment of the interest accruing from the amount deposited to the person who would, for the time being, have been entitled to the possession of the said land. In case any encumbrance has been created by the limited owner; the interest will be paid to the encumbrances to the extent of the encumbrance created.

The principal amount will remain so deposited, until the same is paid to any person becoming absolutely entitled thereto.

III. THE CLAIMS OF MAINTENANCE HOLDER

Section 53 deals with the claims of maintenance holder on surplus land. Where any surplus land acquired under this Act is on the date of the acquisition subject to a charge for the payment of maintenance to another, the amount payable in respect of such surplus land will be kept in deposit before the prescribed authority. Such amount will be deemed to be substituted security and will continue to remain such security till the death of maintenance holder or till the liability to pay maintenance is discharged.

MODE OF PAYMENT OF AMOUNT

According to Section 55, the amount payable under Section 50 will be paid either in cash or in bonds or partly in cash and partly in bonds as the Government may deem fit.

The interest on bonds will be paid : (*i*) in the case of any land held by any person referred to in clause (*a*) or (*b*) of sub-section 5 of Section 18 from the date of the publication of the Notification ; (*ii*) in any other case, with effect from the date of taking possession of the land.

SPECIAL PROVISIONS FOR CULTIVATING TENANTS

Chapter VIII of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961 deals with the cultivating tenant's ceiling area and other related matters.

The cultivating tenant's ceiling area means 5 standard acres held by any person partly as cultivating tenant and partly as owner or wholly as cultivating tenant. That means a cultivating tenant can hold to a maximum of 5 standard acres as a whole. For the purpose of this chapter 'cultivating tenant' includes any tenant who is in actual possession of land but does not contribute his own physical labour or that of any member of his family in the cultivation of such land.

Section 60 A, provides a special definition of date of publication of this Act and Notified date applicable only to the cultivating tenants. They are "the 2nd May 1962" and "the 2nd October 1962" respectively.

FURNISHING OF RETURNS

1. Every cultivating tenant who holds on the Notified date, land in excess of cultivating tenants ceiling area, should within 90 days furnish a return to the Authorised Officer with the following :

(*i*) particulars of the land, which he holds as owner ;

(*ii*) particulars of the land which he holds as cultivating tenant ;

(*iii*) particulars of the name and address of the landowner concerned ; and

(*iv*) such other particulars as may be prescribed.

In the case of a member of Armed Forces , the time limit is six months within the proclamation of Emergency has ceased to operate.

2. If he fails to furnish or furnished an incorrect or incomplete return, the Authorised Officer by notice require him to furnish the return or additional particulars within the specified time not exceeding 30 days.

3. Even then if he fails to furnish the return or additional particulars as mentioned above, the Authorised Officer either himself or through some agency may obtain the particulars.

4. After obtaining the information, he will give reasonable opportunity of making his representation, he will pass necessary orders after following necessary procedures.

TAKING POSSESSION OF LAND

On the basis of information obtained through the return or other modes, and the orders passed by him early, the Authorised Officer will take the possession of the land held by the cultivating tenant on behalf of the Government, in excess of the ceiling area subject to the rights of the owner. For this purpose he will give 3 months notice in writing.

However, where there is any crop standing in such land on the date of expiry of the notice, the Authorised Officer may postpone taking possession of the land and permit the harvest of such crop raised by the tenant. (Section 62)

GOVERNMENT TO PAY RENT

After making possession of land held by the cultivating tenant in excess of the ceiling area, the liability to pay the rent passes to the Government. The Government is liable to pay fair rent annually to the owner of such land as prescribed in Schedule III. Such rent will be paid either in cash or in kind. With respect to dispute regarding payment of rent arises, the parties may make an application to the Land Tribunal for deciding such dispute.

DISTRIBUTION OF POSSESSION OF LAND

Under Section 64, the Authorised Officer will distribute possession of the land, to the landless persons or to persons holding land below the cultivating tenant's ceiling area.

The Authorised Officer may summarily disposes : (*i*) any person to whom any land has been distributed under Section 64, if such person fails to comply with the conditions subject to which the distribution was made or contravenes any Rule made under this Chapter, (*ii*) any other person occupying such land except in accordance with the provisions of this Act.

NO CLAIM AGAINST GOVERNMENT FOR THE ARREARS OF RENT

No claim of any person to any arrears of rent or any other amount accrued or due in respect of any land for the period prior to the date of taking possession of such land under Section 62 shall be enforced by any Court against the Government (Section 67).

RIGHT TO RESUMPTION BY THE LAND OWNERS

Section 68 says that this Act will not affect the right of any land owner under the Tamil Nadu Cultivating Tenants Protection Act, 1955 to resume possession for purposes of personal cultivation of the land, the possession of which has been taken by the Authorised Officer.

ACQUISITION BY LEASE OF ANY LAND IN EXCESS OF THE CEILING AREA :

Section 69 deals with the question of acquisition by lease of any land in excess of the cultivating tenant's ceiling area and furnishing of return. If on or after the Notified date any person acquires by lease any land which together with the land, if any, already held by him exceeds in the aggregate the cultivating tenant's ceiling area, he should within 90 days of such acquisition, furnish to the Authorised Officer, a return containing such particulars as may be prescribed.

If he furnishes the return or fails to furnish the return or furnished an incorrect or incomplete return, the provisions of Section 61 and other provisions of this Chapter will apply as if it were a return required to be furnished under Section 61(1).

Nothing contained in this Chapter shall apply to any land held by any sugar factory as tenant.

EXEMPTIONS UNDER THIS ACT

The exemption is an important aspect of the ceiling law which has undergone frequent changes since 1961. As we have seen earlier, the lands held by religious institution and religious Trust of a public nature continue to be exempt in full. The exemptions originally provided for the following categories of lands held were taken away one by one by subsequent Amendment Acts. They are

1. lands used for cultivation of sugarcane by factories ;
2. lands used exclusively for grazing ;
3. lands in hill area ; and
4. lands used exclusively for dairy farming or livestock breeding.

The exemption in respect of lands under plantation, fuel trees, orchards etc are available only so long as they are in continued use.

Section 73 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, enumerates what are exempted under the provisions of this Act. The following are the exemptions :—

1. any land held by the Central or State Government or any local authority ;
2. any land held by any university ;
3. any land assigned by the Government to and held by any Land Colonization Co-operative Society ;

4. any land in respect of which the Government have granted permission to any industrial or commercial undertakings under Section 37A ;

5. any land in respect of which the Government have granted permission to any public Trust under Section 37B ;

6. all plantations in existence on the date of the commencement of this Act ;

7. lands converted into orchards or topes cannot be considered as gardens whether or not such lands are contiguous or scattered ;

8. any land used exclusively for growing fuel trees on the date of the commencement of this Act ;

9. Gramdan land and land donated for the purpose of the Bhoodan Yagna;

10. any land (a) interspersed among plantations or (b) contiguous to any plantation in respect of which the Land Board has granted any permission under Section 31 ;

11. any land awarded for gallantry to defence personnel.

LAND TRIBUNALS

Sections 76, 76A and 77 deal with the constitution, powers and jurisdiction of Land Tribunals. The Government may constitute any number of Land Tribunals as may be necessary under this Act. The Land Tribunal will consist of only member who is an officer not below the rank of District Revenue Officer.

The Land Commissioner has power to transfer an appeal pending before a Land Tribunal to another Land Tribunal. So also he can stay the proceedings before a Land Tribunal.

Each Land Tribunal shall have such jurisdiction over such areas as the Government may by Notification from time to time determine. If any question is referred by the Authorised Officer to the Land Tribunal for decision under Sections 11(2), 16(3)(*a*)(*iv*) or 51(3), the Land Tribunal shall decide such question. Every Land Tribunal shall have the powers as are vested in Civil Court under the code of Civil Procedure 1908. The Land Tribunal is a single member body under the administrative control of the Land Board. The High Court has got revisional jurisdiction over the Land Tribunal's order.

TAMIL NADU LAND REFORMS SPECIAL APPELLATE TRIBUNAL

The Chapter X-A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961 deals with the constitution of the Tribunal appointment, qualification, removal of members of Tribunal, powers and jurisdiction of the Tribunal.

The hierarchy of the Tribunals under this enactment is constituted by invoking Article 323B-3(*a*) of the Constitution of India. The following are constituted under this Act.

(1) Authorised Officer	Section 3(5)
(2) The Tamil Nadu Land Board	Section 24
(3) Land Tribunal	Section 76
(4) Land Commissioner	Section 97
(5) Tamil Nadu Land Reforms Special Appellate Tribunal	Section77(*c*)

The above mentioned authorities are constituted for adjudication or trial of any dispute or complaint with respect to land reform matters arising under this Act.

CONSTITUTION OF TAMIL NADU LAND REFORMS SPECIAL APPELLATE TRIBUNAL

Section 77(*c*) deals with constitution, appointment, qualification of the members of the Tribunal. The Government shall by Notification in the *Tamil Nadu Government Gazette* constitute the Special Appellate Tribunal for the purpose of this Act.

The Special Appellate Tribunal shall consist of : (*i*) a Chairman, (*ii*) a Vice-Chairman and (*iii*) a member appointed by the Governor after the consultation with Chief Justice of High Court.

Qualifications : (*a*) The *Chairman* of Tribunal must be Judge of the High Court or must be a person who held the office of Vice- Chairman for at least two years. (*b*)*Vice-Chairman* must be a person qualified to be Judge of a High Court or has been an Officer of Government not below the rank of Special Commissioner or Secretary to the State Government for a period of not less than two years or has been Secretary to Law Department for a period of not less than two years or has been member of the Tribunal for the period of

three years (*c*) *Judicial member* – He must be qualified to be Judge of a High Court or has been the Secretary to Government, Law Department for a period of not less than two years (*d*) *Administrative member* – He must be an Officer not below the rank of Commissioner and Secretary to the Government and has dealt with land reform measures during his service for a period of not less than one year in the aggregate.

Terms and conditions of service : The Chairman, Vice Chairman and other members can hold the office for the period of five years and they are eligible for another term of five years. The Chairman and Vice Chairman can hold the office till the age of 65 years and members till the age of 62 years. The salaries and allowances are as prescribed by the Government.

Removal : The Chairman, Vice Chairman and the members cannot be removed before the expiry of the term but on the ground of proved misbehaviour or incapacity, the Governor after an inquiry by a Special Tribunal can remove them after following prescribed Rules. The Special Tribunal should consist of three Judges of High Court, nominated by the Chief Justice.

Powers of the Special Appellate Tribunal : It shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 including the power to punish for contempt. Every order passed by the Special Appellate Tribunal shall be final and shall not be called in question in any Court except the Supreme Court as provided under Section 77G.

Bar of jurisdiction of Courts and writs in High Court : The jurisdiction of all Courts except the jurisdiction of the Supreme Court is excluded with respect to any matter which is by or under this Act required to be decided or dealt with by the Authorised Officer, the Land Board, the Land Commissioner, the Land Tribunal or the Special Appellate Tribunal.

Likewise no Writ shall lie in the High Court to set aside or modify and proceeding or order taken or made by the Authorised Officer, the Land Board, the Land Commissioner, the Land Tribunal or the Special Appellate Tribunal under this Act or with respect to any other matter which is by or under this Act, required to be decided or dealt with by the Authorised Officer, the Land Board, the Land Commissioner, the Land Tribunal or the Special Appellate Tribunal.

Power to summon persons etc : The authorities referred in this Act has power to summon any person to give evidence or to produce a document. Every inquiry conducted by these authorities are deemed to be a judicial

proceeding within the meaning of Sections 193 and 228 of IPC. Penalty is provided for the contravention of order of Special Appellate Tribunal etc under Section 77-I.

The Chapter XI deals with appeal to Land Tribunal and Special Appellate Tribunal, Revision by the Land Commissioner and Special Appellate Tribunal and power to stay the execution of order.

OTHER PROVISIONS

Chapter XIV deals with miscellaneous matters. According to Section 95, where on account of any improvements made in the land by or at the cost of the person holding such land are kind of the lands specified in Section 3(40) is converted into another kind of the lands specified in the said clause after the date of the publication of the final statement under Sections 12 or 14, such conversion shall not be taken into account in calculating the extent of land held by such person.

But where such conversion takes place as a result of any irrigation project constructed at the cost of the Government, the land so converted shall be reduced to standard acres according to the proportion specified in the clause aforesaid and the ceiling area of such person shall be fixed in accordance with the provisions of this Act.

WILL THE DECREASE IN NUMBER OF MEMBERS OF FAMILY AFFECT THE CEILING AREA ?

Section 96 answers to this question. The extent of the ceiling area which a family is entitled to hold under this Act, immediately after the date of the publication of the final statement under Section 12 or 14 shall not be reduced by reason only of any decrease after the said date in the number of members of such family.

CHAPTER X

THE TAMIL NADU BUILDINGS (LEASE AND RENT CONTROL) ACT, 1960

The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is a piece of social Legislation aiming at prevention of unreasonable eviction of tenants. It is a self- contained and complete Code for regulation of rights of landlords and tenants. The present enactment was passed in the year 1960 and it was made permanent in the year 1973.

HISTORY OF THE RENT CONTROL LEGISLATIONS

The reason for enacting rent control Legislation was, then prevailing conditions during the war period in 1941. The strain of World War, the large scale exodus of the working people to the urban areas, the great demand for accommodation and rack renting were the factors for introducing Madras House Rent Control Order 1941. It was introduced as a purely temporary measure to meet an emergency. In order to cover the case of buildings for storage accommodation, the Madras Godown Rent Control Order 1942 was passed later. These two Control Orders were re-issued in 1945 with certain changes, as The Madras House Rent Control Order 1945 and Madras Non-Residential Buildings Rent Control Order 1945. Subsequently, The Madras Buildings (Lease and Rent Control) Act, 1946 was passed and it came into force on 1st October 1946. The Act of 1946 was originally intended in force for two years only. Later, this Act was replaced by the Madras Act XXV of 1949. This Act was enacted to remain in force upto 30th September 1951. But by subsequent amendments its life was extended from time to time and ultimately the present Act, (XVIII of 1960) was passed which itself was declared to be in force for a

period of five years. But even the life of this Act was extended from time to time (*Pal Theatres* vs *Abdul Gafoor Saheb* 1972 (2) MLJ 554). Later this Act was made permanent in the year 1973. The Amendments have been made to this Act in 1973 and 1980.

OBJECT OF THE ACT

The Preamble of this Act says, "an Act to amend and consolidate the law relating to the regulation of letting of residential and non-residential buildings and the control of rents of such buildings and the prevention of unreasonable eviction of tenants therefrom in the State of Madras". The objects of this enactment are well explained in (*Irani* vs *State of Madras* 1962 (1) MLJ SC 92 at 97) ; the legislation was enacted for achieving three purposes, (*a*) the regulation of letting, (*b*) the control of rent, and (*c*) the prevention of unreasonable eviction of tenants from residential and non-residential buildings. This legislation is a piece of social reform enacted to protect the tenants from capricious and frivolous eviction. This Act is self-contained and complete code for all matters dealt with by its provisions. It is evident from various decisions that this beneficial Legislation not only intended to safeguard the rights of the tenant, there are certain provisions which are in favour of landlords also. In (*Nambiar* vs *State of Madras* 1953 (1) MLJ 49 at 53), it is pointed out that while the object of the Act was to prevent arbitrary eviction of tenants, it took good care to see that the interests of the landlords were protected within reasonable limits. The landlord is assured of securing a fair return for his investment.

APPLICABILITY OF TRANSFER OF PROPERTY ACT

The Rent Control Act is a special Act and it substantially modified the provisions of the Transfer of Property Act and in the case of inconsistency, the Rent Control Act will prevail. Provisions or principles to be found in the Transfer of Property Act cannot be interpreted in deciding cases under the Rent Control Act which in several respects differs from and is inconsistent with the Transfer of Property Act. The rights and remedies of the parties under the Rent Control Act are statutory and may prevail over the contract between the parties. Where Rent Control and Restriction Acts are in operation, a landlord cannot obtain eviction of the tenant unless he can satisfy the requirements of the provisions in those Acts. The general law of the landlord and tenant to that extent will give away to the special Acts in that behalf. In fact, these Rent Control Acts make a serious encroachment in the field of freedom of contract. It restricts the power of landlord to evict the tenant and to a great extent it makes the terms of the contract and provisions of the Transfer of Property Act no longer applicable.

This Act is Constitutionally valid and held in number of cases that it is not discriminatory in nature and does not offend Article 14 or 19 of the Constitution of India.

SALIENT FEATURES OF THE ACT

1. The Tamil Nadu Building (Lease and Rent Control) Act, 1960, is a piece of social Legislation aiming at prevention of unreasonable eviction of tenants by unscrupulous landlords.

2. The Act is a self contained and complete Code for all matters dealt with by its provisions.

3. The Act consolidates the entire law relating to the regulation of the letting of residential and non-residential buildings and control of rents and prevention of unreasonable eviction of tenants.

4. Sections 4, 5 and 6 of the Act deal with fixation of fair rent. They mitigate the difficulties of the tenants from the oppressive rack renting by the landlords.

5. Sections 10 and 14 to 15 deal with eviction of tenants and afford considerable security of tenure to all the tenants and take away the landlords unrestrictive power to evict the tenants.

6. Section 11(4) of the Act imposes an obligation on the tenant to pay or deposit all the arrears of rent during the pendency of proceedings for eviction failure of which result in stopping of all further proceedings.

7. Sections 23 and 25 of the Act deal with appeal and revision which enable an aggrieved party to challenge the correctness of the order passed by the Authorities.

8. Section 29 of the Act deals with exemptions. It is an enabling Section intended to meet a contingency when the remedy provided by the Act would be insufficient or inadequate in regard to a particular case.

DEFINITIONS

A number of terms have been defined under Section 2 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. For the proper appreciation of the various provisions of this enactment, it is necessary for us to consider some of the important definitions here.

1. BUILDING :

This term is defined under Section2 (2) of the Act as follows :—

'building' means any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes and includes —

(a) the garden, grounds and out-houses, if any, appurtenant to such building, hut or part of such building or hut and let or to be let along with such building or hut,

(b) any furniture supplied by the landlord for use in such building or hut or part of a building or hut, but does not include a room in a hotel or boarding house.

From this definition, it is evident that the following are considered as building. A building, hut, part of a building, part of a hut. Then garden, ground, out-houses attached to the building or hut or part of building or hut. Again furniture supplied by the landlord for the use of the building or hut or part of the building or hut.

However, a room in a hotel or boarding house is excluded from this definition.

A building may be anything which is capable of occupation. It may be of any size and there is no limitation as to length, breadth or height. The term 'The building' is wider in sense than the house. While deciding the question of building the following factors must be taken into consideration, namely (*a*) the nature of the premises, (*b*) the intention of the parties at the time of granting the lease, (*c*) the purpose for which it was leased out.

The word 'building'.is used here as denoting and descriptive of a structure either of the nature of a house intended for human habitation or for carrying on of a business. In a broad sense, it may take in any erection intended for use and occupation as a habitation or for some purposes of trade or manufacture, but not a mere wall, a fence, a gate or the like.

Where the site leased forms an integral part of the buildings, the lease of the site will be governed by the provisions of the Act. However, this Act does not apply to leases of ground on which the tenant puts up the superstructure, with which the landlord has nothing to do.

Even a building standing on four poles with zinc sheet roofing will come under the definition. A vacant site for running automobile workshop with wooden poles in the middle to support asbestos roof and open on all sides is a building. A wooden bunk constructed of timber measuring by 5 feet 49 feet where business can be carried on is a building or at any rate a hut within the definition. A building includes a flat. So where there is a building which has two or more storeys each flat or storey is a building. The 'Kaichalai' is a structure which falls within the purview of the definition.

It is pointed out in (*Geetha* vs. *G. Sankaran and another*) [2001(1) 1MLJ 390] that however insignificant a building along with land is leased to the tenant, it will fall within the ambit of Section 2(2) and eviction petition is maintainable under the Act.

The contract of tenancy is a single and indivisible contract and in the absence of a statutory provision to the effect, it is not open to the Court to divide it into two contracts, one for letting for residential purposes and the other for non-residential purposes. It is settled law that where there is single individual contract of tenancy it cannot be split by a Court unless there is a statutory provisions to that effect [*Habibunnisa Begum and others* vs. *G. Doraikannu Chettiar and others* 2000 (1) MLJ 104 (SC)]. When the premises form different units and each will come within the meaning of a building under Section 2(2) of the Act and the purposes for which they serve would be different, the clubbing of these premises together for the purpose of obtaining reliefs under the provisions of the Act will cause prejudice to the tenant (*Unnamalai Achi* vs *Swaminatha Pathar* 93 LW 404). Where the tenant of a premises dies and the evidence is that the two sons of the deceased occupied different portions, it is a clear case that the tenancy is one and the family cannot split it.(*Thirunavukkarasu* vs *Damodaran* 78 LW SN 75).

There is no definition of non-residential building in the Act and whether a building is residential or non-residential is a mixed question of law and fact. In determining whether a premises is residential or non-residential the main or primary purpose for which it let out or taken or used must be considered.

'Building' includes a part of building but that part must be let or must be such as to be let separately for residential or non-residential purpose.

The definition of the word, 'building' includes garden, grounds and out-houses, which are appurtenant to such building. The word 'appurtenant' includes all structures or property abutting or adjacent to the main tenaments or property which are proper and necessary for its due enjoyment.

2. CONTROLLER :

This term is defined under Section 2(3) of the Act of 1960. The Controller means any person appointed by the Government by Notification to exercise the powers of a Controller under this Act, for such area as may be specified in the Notification. He is a *persona designata*. The powers exercisable by the Rent Controller under the Act are judicial in nature and hence only a judicial authority can be appointed as Rent Controller under Section 2(3) of the Act.

The date of commencement of the Act is specifically defined in Section 2(4) as the date on which the Act is published in the *Fort St.George Gazette i.e.*30th September 1960.

3. LANDLORD :

The term landlord is defined under Section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as follows :—

"Landlord' includes the person who is receiving or is entitled to receive the rent of a building whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent if the building were let to a tenant."

Explanation: A tenant who sublets shall be deemed to be a landlord within the meaning of this Act in relation to a sub-tenant.

The above definition is an inclusive one and does not actually define the term 'landlord'. The definition is comprehensive enough to take in persons who are not strictly landlords under the general law. A landlord according to this definition is —

(*i*) a person who is receiving the rent ; or

(*ii*) a person who is entitled to receive the rent either on his own account or on behalf of another.

A person who is either realising or is entitled to realise the rent is regarded as landlord for the purpose of the Act, notwithstanding to the fact, he is not the actual lessor or the owner of the premises. This definition is absolutely different from what is given in the Transfer of Property Act. As far as the Rent Control applications are concerned, it is not the ownership of the property that entitles a person to file an eviction petition but when a person comes under the definition

of landlord mentioned in Section 2(6) of the Act, he is entitled to maintain the petition for eviction (*Nagalingam* vs *Ramasamy Chettiar* 1976(1) MLJ 149).

Now let us consider briefly who are the persons who will come under this definition. The heir of the landlord who is collecting the rent, during the life time of the landlord, is a landlord. The Kartha of a joint family is a landlord under this definition. In the case of joint family, the members who constitute the joint family are the landlords. The term will include a co-owner. The firm is not a legal entity in substance the partners of the firm will be landlords. It is a well settled law that a chief tenant will be a landlord within the meaning of the Act. The definition includes, Executors, Administrators, Receiver, Official Assignee also. Further it includes both Vendor and Purchaser.

It is clear from the discussion the following persons are within the term 'landlord'.

(*i*) the owner of the premises ;

(*ii*) the person receiving rent for the time being ;

(*iii*) the person entitled to realise the rent ;

(*iv*) the Agent, Trustee, Executor, Administrator, Receiver or Guardian ; and

(*v*) the tenant *vis-a-vis* the sub-tenant.

4. TENANT :

This term tenant is defined under Section 2(8) of the Act. Tenant means any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son, or daughter or the legal representative of a deceased tenant. (*i*) who had been living with the tenant in the building as a member of his family upto his death or (*ii*) had been in continuous association with the tenant for the purpose of carrying on the business of the tenant upto his death and continues to carry on such business thereafter and a person continuing in possession after the termination of the tenancy in his favour.

Section 2(8) defines the term 'tenant' in very broad terms to include any person by whom or on whom account rent is payable for a building and even includes the surviving spouse or any son or daughter and any person continuing in possession after the termination of tenancy in his favour.(*Ramaiah Chettiar* vs *Sankaralingam Pillai* 1976 (1) MLJ 484).

The definition would include both a tenant during the subsistence of contractual tenancy and a tenant "continuing in possession after the termination

of tenancy". In order to fall within the definition of tenant contained in the Act, the assent or consent of the landlord is totally unnecessary and immaterial. A tenant, although he denied the title of the landlord, must be deemed to continue in possession all along as a tenant.

A spouse who is in continuous association in the business of the husband, is entitled to the benefits under Section 2(8) of the Act. The right of a statutory tenancy can be claimed only by the following categories of persons : (1) surviving spouse, (2) any son, (3) daughter and (4) legal representatives. Therefore, a stranger creditor has no place within the scope of the section.

The tenancy created by a mortgagee in possession comes to an end the moment the mortgage is redeemed and unless there is a fresh forging of the relationship of landlord and tenant between the mortgagor and the erstwhile tenant. This definition does not include within its ambit the persons who are licencees.

Persons claiming to be a tenant must satisfy two conditions namely, (*i*) that he or she is the surviving spouse or any son, or daughter or the legal representatives of the deceased tenant; (*ii*) the above said such person should have been living with the tenant in the residential building as a member of the tenants family upto the death of the tenant. In the case of non-residential building he or she should be in continuous association with the tenant for the purpose of carrying on business upto the death of the tenant and continues to carry on such business thereafter.

A Statutory tenancy normally arises when a tenant under a lease holds over and he remains in possession after the expiry or determination of the contractual tenancy. He has no estate or interest in the premises occupied by him. He has merely the protection of the statute. Such a tenancy would come to an end either on the surrender of the premises by such tenant or if a decree of eviction is passed against him.

With these discussion we can come to the conclusion, that the following person may be considered as tenants under this Act.

They are —

1. A person by whom the rent payable ;
2. A person on whose behalf the rent is payable ;
3. A person by whom the rent of any accommodation would have been payable but for a contract express or implied ;

4. A person who is in continuous association with the tenant for the purpose of carrying on business till his death ;

5. A person continuing in possession after the termination of contractual tenancy ;

6. Surviving spouse, son, daughter and legal representative living in the residential building with the tenant upto his death.

5. RENT :

The word 'rent' in the ordinary sense denotes a return in money or kind for enjoyment of a specific property held by a person from or under another. It is a periodic payment on specified occasions. The distinguishing feature in the case of rent inso far as the Rent Control Acts are concerned is that it is payable in terms of money (*Abdul Gafoor* vs *Abdul Salam* 1954 (2) MLJ 391). This term 'rent' is not defined under this Act.

The term 'rent' used in the Act would include all payments agreed to be paid by the tenant to his landlord for use, and occupation not only of the building and furniture, but also for rates, electricity, water and other amenities including services. In other words, any sum of money which the tenant agreed to pay as consideration for the tenancy would be rent (*Sakuntala Rajappa* vs *Kamala* 1972 (2) MLJ 454 at 461).

Notice of Vacancy :

Section 3 imposes an obligation on the landlord to give written notice of vacancy to the Authorised Officer within the time specified. Under the Act the obligation to give such notice is laid on the outgoing tenant also. Section 3 is a lengthy section having 10 sub-clauses and it lays down elaborate procedure for this purpose.

Section 3(1)(*a*) (*i*) : **Every landlord** shall within seven days after, the buidling becomes vacant,

(A) by his ceasing to occupy it, or

(B) by the termination of tenancy, or

(C) by the eviction of the tenant, or

(D) where any such building has been requisitioned under any law for the time being in force other than this Act, by release from such requisition, give notice of the vacancy in writing to the officer authorised in that behalf by the Government.

(*ii*) **Every tenant** shall, within seven days after the building becomes vacant, by his ceasing to occupy in writing to the officer authorised in that behalf by the Government.

Section 3 enables the Government to obtain possession of the premises, the vacancy of which has been Notified, if the Government should require the premises for the occupation of a servant of the Government or of any local authority or of any public institution under the control of Government (*Sheikh Mohammed Shah* vs *State of Madras* 1966 (1) MLJ 295). The provisions of the section have been constitutionally upheld. The deprivation of the landlord of the right to hold the property by the law granting to a tenant paying a reasonable rent, a right to be in possession of the premises against the will of the landlord, is not an infringement of Article 19(1) (*f*) of the Constitution or an unreasonable restriction on the exercise of his right (*Pakkiriswami Naidu* vs *State of Madras* 1957 (1) MLJ 161 at 164).

Landlord obtaining order of eviction need not Notify the vacancy. The other provisions of this Section deal with particulars of notice, powers of Authorised Officer, failure to give notice, allotment of the premises and other related matters.

Section 3A of the Act speaks about the release of building by the Government.

FIXATION OF FAIR RENT

Under Section 4 sub-section (2) either the tenant or the landlord can file an application for fixation of fair rent and the Rent Controller after making such enquiry will fix the fair rent according to the guidance and principles laid down in other sub-sections of Section 4.

This provision has been enacted with the object of mitigating the difficulties of the tenants and at the same time to provide for a reasonable return to the landlord. It relieves tenants from oppressive rack renting. Further, the provision is specifically intended to relieve the tenant from any agreement which might be compelled to enter into his disadvantage by the landlords stipulating for a higher rent taking advantage of the tenant's pressing need for accommodation (*OSM Salih* vs *A.M.Salih* 75 LW 511 at 513.)

The fair rent shall be nine per cent gross return per annum in the case of residential building and twelve per cent gross return per annum in the case of non-residential building on the total cost of such building. This has been laid

down in sub-sections (2) and (3) of the Act. It consists of the (*i*) market value of the site, (*ii*) cost of construction of the building and (*iii*) cost of provisions of the amenities specified in Schedule I. On the date of application for fixation of fair rent while calculating the market value of the site in which the building is constructed, the Controller will take into account only that portion of the site on which the building is constructed, and a portion upto 50 per cent there of the vacant if any appurtenant to such building the remaining 50 per cent of the vacant land is treated as amenity. The cost of provision of amenities shall not exceed fifteen per cent in the case of residential building and in the case of non-residential building twenty-five per cent of the cost of the site. The cost of construction of the building includes the cost of basic amenities such as internal water supply, sanitary and electrical installations which are determined according to the rates adopted by the P.W.D. of the Government. The above determination of the cost of construction is laid down in sub-section(5) clause (*a*) of the Section 4 of this enactment. After the determination of the cost of construction of the building as specified in Section 4(5) (*a*), the depreciation calculated at the rate as specified in Schedule II shall be deducted.

SCHEDULE - I

1. Air – conditioner,
2. Lift,
3. Water cooler,
4. Electric Heater,
5. Frigidaire,
6. Mosaic flooring,
7. Side dadoos,
8. Compound walls,
9. Garden,
10. Over-head tank for water supply,
11. Electric pump and motor for water supply,
12. Playground,
13. Badminton and Tennis court,
14. Sub-meters,
15. Amenity referred to in the first proviso to sub section(4) of Section 4,
16. Usufructs, if any enjoyed by the tenant,
17. Features of special architectural interest.

SCHEDULE – II

RATES OF DEPRECIATION

Sl. No.	Type of Buildings	Rate of Depreciation per annum
1.	Buildings built in lime mortar and in which teak had been used throughout	1 per cent
2.	Buildings built partly of brick in lime mortar and partly of brick in mud and in which teak has been used.	1½ per cent
3.	Building built in brick in mud and in which country wood has been used.	2 per cent
4.	Buildings which are interior to those of class 3 with brick-in-mud unplastered walls and mud floors and in which cheap country wood has been used.	4 per cent

Explanation :

(1) The depreciation shall be calculated for each year on the net value arrived at after deducting the amount of depreciation for the previous year.

(2) The amount of depreciation shall in no case be less than ten per cent of the cost of construction of the building.

(3) The actual depreciation of a building aged 'n' years is calculated by using the formula : $P = A\, n / \frac{(100 - r)^{n}}{100}$

where A = total cost of construction of the building, r = rate of depreciation per annum, n = age of the building *(i.e)* number of years, p = the final depreciated value of the building.

The amount of depreciation will be equal to (A-P) subject to a minimum of ten per cent of 'A'.

The Act has a threefold purpose. One is to regulate the letting of buildings and the other is to control the rent of such buildings. The third is to prevent unreasonable eviction of tenants. Sections 3 and 10 of the Act relate to

regulation of letting and prevention of unreasonable eviction. Section 4 relates to control of rent.

A close reading of the Act shows that fair rent is fixed for the building and it is payable by whomsoever is the tenant whether he is a contractual tenant or statutory tenant. What fixed is not the fair rent payable by the tenant or the landlord who applies for fixation of fair rent but fair rent for the building (*Raval and Company* vs *Ramachandran* 1974 (1) SCC 424 at 433). The provisions of the Act show that they are to take effect notwithstanding any contract, even during the subsistence of the contract. Fixation of fair rent does not mean the fixation of low rent favourable or beneficial and to the advantage of the tenant as that would result in the landlord getting only an unfair rent. This has been pointed out in *Venkataswami* vs *Adbul Rahim & Bros* 1962 (1) MLJ 406.

A fixation of fair rent can only take place by means of the specified procedure provided for it. Fair rent is essentially just rent having regard to all circumstances. It is not a rent favourable to the tenant as such. As far as the Madras Act is concerned, the right to apply for fixation of fair rent is vested in all landlords and tenants of buildings both during the subsistence of a contractual tenancy and after its determination (*Raval & Company* vs *Ramachandran* 1966 (2) MLJ 68).

The words in the Section are plain and have only one meaning namely that a landlord as well as tenant could apply under Section 4 of the Act. The tenant has a right to apply for fixation of fair rent and the mere fact that he agreed to pay the rent at a certain rate from the inception of the tenancy is not a bar to enforce such a right. Whether the contractual tenancy includes a stipulation of rent at a higher figure or otherwise both the landlord and the tenant are entitled, notwithstanding the contract to obtain this fixation, that is just and reasonable rent and hence the provision is neither for landlords nor for tenant, but for both. (*Raval & Company* vs *Ramachandran* 1966 2 MLJ 406). A firm is bound to pay rent in respect of the building to the landlord in the same way as it is bound to discharge its debts to others. The firm's name can certainly be utilised for getting the fair rent ascertained under the provisions of the Act though firm was dissolved on that date.

TOTAL COST

Whether the premises is a residential building or a non-residential building it is imperative while arriving at the total cost of the building to take into consideration the **market value of that portion of the site** on which the

residential or non-residential building is constructed. In the case of residential building 9 (nine) per cent gross return per annum of the total cost of the building shall be deemed to be fair rent. The total cost referred to in Section 4 includes the **actual cost** of construction which again has to be arrived at in accordance with the guiding Rules and Principles laid down in the Act and Rules framed thereunder. The total cost referred to in sub-sections (2) and (3) of Section 4 consists of the market value of the site in which the building is constructed, the cost of provisions of anyone or more of the amenities specified in the **Schedule I** as on the date of the application for fixation of fair rent. It is obligatory on the part of the court to take into consideration both the market value and the cost of construction of the building.

MARKET VALUE OF THE SITE

The market value of the site on which the building is constructed should also be taken into account while fixing the fair rent. While computing the market value of the site, the following two factors are to be taken into consideration *viz.*, (1) the portion of the site on which the building is constructed, (2) a portion upto 50 per cent, thereof of the vacant land, if any, appurtenant to such building. The remaining 50 per cent of the vacant land is to be treated as an amenity. [*Kaliammal & Others* vs *Athi V. Ramachandra & others* 1983 (II) MLJ 252].

The actual area of the site over which the construction has been put up has to be first determined. From the total area of the site, the area of the site over which the building has been put up has to be deducted and the balance if any will be the vacant land. If the area of the vacant land thus arrived at is equal or less than 50 per cent of the area of the site over which the construction has been put up such extent of vacant land has to be added on to the area of the site occupied by the construction and the market value of that area. If, however, the vacant land is in excess of 50 per cent of the area over which the construction has been put up then the extent to be added to the area of the site occupied by the construction will be only 50 per cent of that area and no more and the market value of the site will be the market value of that area. In the latter case, the vacant land remaining after so adding 50 percent of the area of the site over which the construction has been put up to the area of the site occupied by the construction is treated as an excess portion and amenities.(*Veeman Pillai* vs *Jindal* 94 LW 21)

In the case of a building having more than one floor, the principle ought to be one of apportionment in accordance with the number of storeys. If there

are two or more storeys, the market value of the land for the first floor will be half. If there are more than two storeys it will be proportionately distributed in accordance with the number of storeys in the buildings (*A.C.Charities* vs *Sadhana Aushadalaya* 1968 (2) MLJ 406). In the case of a flat to fix the fair rent, the court should take into account the total cost of the building, including staircase and then decide it by number of flats if the flats are identical. The land around the building will be treated as common to all the tenants and then fair rent is to be fixed. (*Banu & another* vs *P.Venkateswaran* 100 LW 389)

COST OF CONSTRUCTION

The fixation of rates for classes of residential and non-residential buildings as well as the rates of depreciation was left to the Rule making power. Total cost contemplated by Section 4(2) was not on the basis of the original cost of construction nor on the present market value of the building but under the rates prescribed by the Rules.

Section 4 not only provides the procedure but also the principles and method on the basis of which the fair rent is to be determined.

The rates given in the Mini Technical Handbook issued by the Tamil Nadu Public Works Department with regard to the cost of construction should be considered while finding fair rent in respect of any premises. To this must be added the cost of electrical installation and sanitary fittings. It is common knowledge that these costs have also been escalating from time to time and 15 per cent of the total cost must be the minimum which must be added to the bare cost of construction to arrive at the cost of construction as contemplated by the Act(*The Collector of Madras, Accommodation Wing, Madras* vs *A.N. Gajendran* 102 LW 49 at 51).

While calculating cost of construction under Section 4 of the Act, cost of internal water supply also should be taken into consideration with due regards to the rates adopted by the Public Works Department. The Public Works Department rate cannot be treated as confidential. Any party to the petition has got right to know the rates fixed by the Public Works Department (*A.Emperumanar* vs *K.Raghavalu* 101 LW 568). While fixing the fair rent for any given building the Rent Controller and the Appellate Authority should follow the procedures laid down under Section 4 and the Public Works Department rates are not confidential in nature and the Rent controller will also make available to the parties the rates fixed by Public Works Department before fixing the fair rent.

AMENITIES

The intendment is to take into account 50 per cent from that of the vacant land to be treated as part of the site over which the building is constructed and the other 50 per cent of the vacant land to be treated as amenity and its cost should work out under the schedule of the Act (*Shamana Unnisa Begum* vs *Najiah* 1980 (2) MLJ 9). The vacant land remaining after adding 50 per cent of the area of the site over which the construction has been put up to the area of the site occupied by the construction, is treated as an excess portion and amenity. Amenities such as air conditioners, lifts, electric fans, pump for water, flushouts fixed, wash basin, staircases, out-houses, cattlesheds, garden or vacant land appurtenant to the building enjoyed by the tenant will be also included in the cost of the building as allowances. But many of these amenities would be taken into account in determining the market value of the building.

DEPRECIATION

In (*Venkatasamy Nayagar* vs *Union of India* 1967 (1) MLJ 322), the scope of depreciation is clearly explained. It is not disputed that under the Act, the fair rent once fixed will continue to govern the relationship of the parties under the Act only subject to changes allowed under Section 5 of the Act. Hence, it appears to be entirely justified for a further scientific procedure to allow to depreciation even with regard to brand new building.

The depreciation calculated at the prescribed rates is to be deducted from the cost of construction as calculated according to the rates prescribed. When the cost of construction is arrived at on such basis, the depreciation at the prescribed rate is to be deducted therefrom backwards. This mode of deduction of depreciation is no doubt a reverse process (*Parasuram Iyer* vs *Chief Rent Controller* 1965 (2) MLJ 20).

METHODS OF FIXING THE FAIR RENT

There are several methods of fixing the fair rent. It may be based upon the Municipal valuation, uninterrupted past payment without protest, the rents commanded by the properties of similar description in the vicinity by the amenities provided and by a hundred and other reasons incidental in each case (*Subbier* vs *W.P.Chetty* 1958 (2) MLJ 583). The provisions of the Act empower the Rent Controller to determine the standard rent after taking into consideration all the constituents which made up the total sum shown in the agreement as a monthly rent. These authorities are authorised to determine rent which is fair and reasonable.

The total cost of construction of a building shall be made up of three ingredients namely, (1) cost of the site on which the building is constructed, (2) the cost of construction of the building and (3) the cost of provision of anyone or more of the amenities specified in **Schedule I** as on the date of application for the fixation of fair rent (*K.Kaliammal & others* vs *Athi V.Ramachandra & others* 1983 (2) MLJ 252). It is duty of the landlord to produce the sanctioned plan. Failure to do so may entitle the Court to draw adverse inference unless the non-production is explained. The cost of electrical installations under Section 4(5)(*a*) is a matter of evidence. For the purpose of calculating the cost of construction, there cannot be a rate different from the rate which is normally fixed by the Public Works Department and which finds a place in the main technical hand book issued by the Association of Engineers and Assistant Engineers' Association of Tamil Nadu Public Works Department.

When the assessing authority arrives at its own figure of standard rent by applying the procedure laid down in the Act, it does not in any way usurp the function of the Controller because it does not fix the standard rent which is binding on the landlord and tenant but it merely arrives at its own estimate of standard rent for the purpose of determining the annual value (*Diwan Daulat Raj Kapoor* vs *New Delhi Municipal Committee* 1980 (1) RCJ 468). In determining the fair rent for a building under the Section on the basis of the capital value of the building, the Tribunal has to take into account not only the cost of subsequent construction, improvements or additions made by the landlord but also the original purchase price of the building. If the building is developed one made so by substantial alterations, additions or new construction then the fixation of fair rent under the Section may have to be made on different considerations, where a certain amount was fixed and paid for improvements covering installation of electricity connection as well as consumption it is a factor that must be taken into consideration. Sheds put up by the tenants cannot be taken into consideration while calculating the plinth area.

APPORTIONMENT

Apportionment or equal distribution of the burden of rent on every portion, is a rule of justice and good sense. If the standard rent of a whole was a specific amount, it stands to reason that the standard rent of a part or sub-division of the whole should not be ordinarily exceed that amount. Therefore, in the circumstance of a given case if the Court feels that for securing the ends of justice and giving effect to the provisions and policy of the Act, it is

reasonably necessary and feasible to work out the standard rent by apportionment it can legitimately do so. This principle, however, is applicable where on the basic date that portion of which standard rent is to be determined has not been let separately as one unit, but the whole of which it is a part, has been let on that date. Apportionment postulates that on account of its having been let on the basic date the whole had acquired a standard rent which is to be allocated to the smaller units subsequently carved out of it (*Raja Bahadur Motilal Bombay Mills* vs *Govinda Ram* 1974 (2) SCC 178). It is obvious however, that for the shops which had been let out to the tenants the Rent Controller had to take into consideration the cost of the entire building value, the fittings, etc. In other words, he had to take the entire building into consideration for the purpose of fixing standard rent of the shops in the building let out to various tenants. That being the position it was held that the proceedings were not rendered abortive merely because the Rent Controller also fixed the standard rent for some of the vacant shops. For the purpose of the appeal, the standard rent fixed for the vacant shops may well be ignored, that will not affect the rent fixed for the shops which had been let out to the tenants (*Roshanlal Mehra* vs *Iswar Das* 1963 (1) SCJ 181). In case of apportionment where the building is occupied by different tenants floorwise and if there is a demise of any land appurtenant to the building the real test would be how one party intended to give and how the other party intended to take the demise and the subject matter of the demise (*H.C.Lodha* vs *Dr. C. Ranganathan* 1989 (1) MLJ 213).

DATE OF COMMENCEMENT OF FAIR RENT

The effect of the decision in Hari R.Gore Sastri's case is that a landlord filing an application for fixing fair rent is entitled to the enhanced rent from the date of his application under Section 4 of the Act. There is no provision in the Act itself directly dealing with the question of landlord being entitled to such fair rent. The fair rent cannot come into operation from a date anterior to the date of application. Although in terms the fourth Section of the Act does not say as to from which date the fair rent fixed has to come into force, ordinarily and generally it is to be from the date of the application. There may be circumstances justifying the fixation of fair rent from another date than the date of application and where there are special circumstances existing in the case the date of the order of the District Judge (Appellate Authority) would be an appropriate one for commencement of fair rent (*Miran Devi* vs *Birbal Dass* 1977 (3) SCC 496).

The language of the Section 4 is as plain as it could be and there is nothing instrinsically wrong or unjust in a tenant being asked to pay a "fair rent" if the rent stipulated as payable under the lease is lower than the fair rent when that very tenant is given a right to compel the landlord to accept "fair rent" as determined by the Controller and forego the higher rent which he himself agreed to pay under the contract of lease. Where the fair rent fixed is higher than the contractual rent the landlord is bound by the contractual terms of the tenancy only to the extent specified in the Act. When an application is filed ignoring the previous application for the same relief it is held on a fair reading of the provision of the Act, the tenant cannot file another application for the same relief for fixing the fair rent.

ESTOPPEL AND RES JUDICATA

The landlord may prosecute a suit for eviction on the basis of termination of his tenancy under the ordinary law but he cannot do so after obtaining a fixation of fair rent under the House Control Order on an application on the basis of a clear and specific recognition of the tenancy (*Captain Sunkavally* vs *Singaraju* 1949 (2) MLJ 339).

Any finding given in the previous proceedings with regard to fair rent for the premises would not be **res judicata** because fixation of fair rent depends upon various factors and special circumstances and fair rent cannot remain the same for all the time. The position is likely to change from time to time and factors such as the importance of locality, the prevailing rents for shops in the locality, etc., have all to be taken into account (*Ethirajulu Naidu* vs *Hajee Abubaker & Sons* 1964 (2) MLJ 98).

CHANGE IN FAIR RENT

Sections 5 and 6 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, deal with variation in rent. Section 5 of the Act deals with increase or decrease of rent due to improvement or diminution in the accommodation or amenities in the building.

1. INCREASE OR DECREASE OF FAIR RENT

There are three clauses in Section 5 of the Act. Clause (I) of Section 5 says where some additions, improvement or alteration have been carried out at the expense of the landlord at the request of the tenant then in occupation, the landlord can claim increase in fair rent. Otherwise no change is permissible with respect to the fair rent already fixed or refixed.

Clause (2) of Section 5 says, the tenant may claim a reduction in the fair rent where there is a decrease or diminution in the accommodation or amenities provided with respect to the fair rent already fixed.

Any dispute regarding increase or decrease of fair rent will be decided by the Controller.

According to clause (3) of Section 5, in case the fair rent has been fixed before the date of the commencement of the Tamil Nadu Buildings (Lease and Rent Control) Amendment Act 1973, the landlord or tenant may apply to the Controller to refix the rent in accordance with Section 4 of this Act.

2. INCREASE OF RENT DUE TO TAXES ETC.

Section 6 of the Act deals with the situation that where the taxes and cesses payable by the landlord increase, he can claim the excess from the tenant in addition to the rent payable. Section 6 provides that where subsequent to the demise of the premises, taxes have increased and such an increase not being an increase of rent in respect of the building, the statute comes to the rescue of the landlord and enables him to recover that excess from the tenant. This is a right secured by the landlord under Section 6 of the Act.(*Raval and Company* vs *Ramachandran* 1968 (2) MLJ 50).

3. PAYMENT OF PREMIUM OR ADVANCE

Section 7 of the Act declares that the landlord should not claim or receive anything in excess of fair rent or agreed rent. Where the Controller has fixed or refixed the fair rent of the building – the landlord shall not claim, receive or stipulate for the payment of (*i*) any premium or other like sum in addition to such fair rent or (*ii*) anything in excess of such fair rent. However, he is entitled to receive or stipulate for one month's rent by way of advance. In case the landlord has already received the premium, he should refund it to the tenant or adjust it in the rent.

The term premium is defined under Section 105 of the Transfer of Property Act. Premium is a lumpsum made outright as price for the lease. The amount paid by way of advance is to be kept by the landlord to be adjusted or to be refunded to the tenant as determination of tenancy (*Venugopal* vs *Doyal Prasad* 1970 (1) MLJ 60). The same provision will apply even to the cases where the fair rent of a building has not been so fixed (clause 1)

Consequences of fixation of fair rent are set out in clauses 1 and 2. Sub-section (3) declares that any contravention shall be *null* and *void*.

LANDLORD'S LIABILITY TO GIVE RECEIPT FOR RENT AND TENANT'S RIGHT TO DEPOSIT RENT

Sections 8 & 9 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 deal with the landlord's liability to give receipt for rent or advance and tenant's right to deposit rent in certain cases respectively.

Every landlord who receives any payment towards rent or advance shall issue a receipt duly signed by him for the actual amount or rent or advance received by him.

If the landlord refuses to accept or evades the receipt of rents, the tenant is given a system of remedies which he can resort to under the said system (*Marudhachala Udayar* vs *Dhandapani* 1980 (1) MLJ 169). The provisions of Section 8 lays down the procedure step by step. (1) When he refuses to accept or evades rent, the tenant may request by notice in writing the landlord to specify the Bank within 10 days from the date of receipt of notice, to deposit the rent due. (2) Then it is for the landlord to specify the bank situated within the City or Town. (3) If he speficies the Bank, then it is duty of the tenant to deposit the rent in the Bank. (4) In case, the landlord does not specify a Bank as mentioned above, then the tenant can remit the rent to the landlord by money order after deducting the money order commission. (5) If the landlord refuses to receive the rent remitted by Money Order, the tenant may deposit the rent before the Controller.

The Rent Control Act is a piece of social legislation designed to protect the tenant from landlords on frivolous, insufficient or purely technical grounds. Even as the Act allows the eviction of tenant on the ground of non-payment of arrears of rent, the provisions affords sufficient protection to the tenant against eviction, if the tenant deposits the rent in accordance with the provision [*Sheo Narain* vs *Sher Singh* 1980 (1) SCC 125 at 130].

Right of tenant to deposit rent in certain cases where the address of the landlord or his authorised agent is not known to the tenant, he may deposit the rent lawfully payable to the landlord before the Controller in such a manner as may be prescribed and continue to deposit any rent which may subsequent became due until the address of the landlord or his authorised agent become known to the tenant – Section 9(1).

Tenant contending that landlord refused to receive the rents for more than two years, but not taking steps to deposit rents in court invoking Section 8. Tenant held guilty of wilful default [*Hakim and co represented by its Partners* vs. *Radha Krishnan and others* 2001 (1) MLJ 110].

PAYMENT OF RENT DURING THE PENDENCY OF PROCEEDINGS

Section 11 of the Act of 1960, deals with the payment or deposit of rent during the pendency of proceedings for eviction. This Section insists that the tenant should make payment or deposit of rent, when the landlord has made an application under Section 10 for eviction or preferred an appeal under Section 23 in the manner and within the time prescribed. To be within the protection of the provision, the tenant must not only pay all arrears due from him on the first date of the hearing but he must thereafter continue to pay or tender in Court regularly the rent and the permitted increases till the suit is finally decided.

Section 11(4) is a significant one since non-compliance of the condition provided thereunder will result the stopping of the all further proceedings and re-delivery of building to the landlord. It simply says that if any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the Appellate Authority will stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

The scope of this provision is clearly explained in [*Perumal Chettiar* vs *Muthuswamy & Company* (1962 (2) MLJ 218 at 220]. It intended to prevent defaulters from continuing in possession of the property taking advantage of the pendency of an application without at the same time performing their own part of the obligation. Secondly, it does not cover grounds other than default for payment of rent.

Section 11(1) is to the effect that no tenant against whom an application has been made by a landlord shall be entitled to contest the application before the Controller on the application unless he has paid or pays to the landlord or deposits with the Controller or Appellate Authorities as the case may be, all arrears of rent due in respect of the building upto the date of payment of deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building until the termination of the proceedings before the Controller or Appellate Authority. (*Badrunissa Begum* vs *Palani Ambalam* 90 LW 287 at 288). It is evident from this, that the payment of arrears is a condition precedent to the hearing of the tenant on the objections raised by him. If the tenant commits wilful even during the pendency of the proceedings despite several opportunities given to him by the Rent Controller and Appellate Authority, he is liable to be evicted under Secion 11 (4). It is only to safeguard the interest of the landlord in relation to such recalcitrant tenants, a provision like Section 11(4) has been introduced (*P. Lachiram* vs *K.M.Kumaresan*, 1980 (1) RCJ 123).

However when the status of the tenant is very much in issue and till that is determined and till he is adjudged as a tenant, there can be no question of calling upon him to deposit whatever was lawfully due within the meaning of the section (*Abdul Aziz khan* vs *Appachi Gounder* 1957 (2) MLJ 514).

Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1) the Controller or the Appellate Authority will determine summarily the rent to be so paid or deposited on application made by the parties - Section11(3).

FAILURE TO PAY THE RENT

Section 11 (4) is intended to make the tenant alert during the entirety of the proceedings and conscious of his obligations and statutory duties of payment of rents. Non-compliance of the conditional order under Section 11(4) will entail eviction. That is the very purpose of Section 11(4). In such a case, the main petition is not to be construed as pending since a subsequent order of eviction will be passed in the main petition also (*Swaminatha Mudaliar* vs *S.M. Singaram* alias *Sinniah* 1982 (1) MLJ 418 at 420). Where a conditional order of eviction has been passed under section 11(4) the deposit of arrears of rent in terms of Section 14(1) is essential even for filing the appeal. An appeal filed without complying with the conditional order is not maintainable. Any subsequent deposit will not cure the original non-compliance. Though this sub-section is strictly applicable to the proceedings before the Rent Controller and the Appellate Authority, the principle can be and should be applied to proceeding in a revision petition also. Order to stop all further proceedings and for eviction under Section 11(4) is only a consequential order and absence of reasons is therefore not a vitiating circumstance. Where fair rent is fixed by Court, the tenant ought to pay the fair rent after it was determined. But where he has paid only at the old agreed rate even after the fixation of fair rent, an order under Section 11(4) could be passed with reference to the balance amount, since the tenant has not paid the balance amount (*P.S.Hussain* vs *C.A.Kabeer* 1990 (1) MLJ 85 at 90. Sub-section 5 of Section 11 enables the landlord to withdraw the amount deposited under sub-section (1). For that purpose he has to file an application to the Controller or Appellate Authority as the case may be.

EVICTION OF TENANTS

Sections 10, 14,15 and 16 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 deal with the eviction of tenants. Section 10(1) says "A tenant shall not be evicted whether in execution of a decree or otherwise except

in accordance with the provisions of the Section or Sections 14 and 16. However, where the landlord is the Government, this Section has no application.

The Section 10 is a lengthy one consists of 8 clauses. Clauses (2) and (3) of Section 10 deal with the eviction of tenants apart from Section 14. The landlord who seeks to evict his tenant should apply to the Controller for a direction in that behalf. If the Controller after giving the tenant a reasonable opportunity of showing cause against the application is satisfied that the tenant is liable to be evicted on any of the grounds mentioned below, will pass an order directing the tenant to put the landlord in possession of the building. Otherwise he will make an order rejecting the application.

Notice to quit is not a pre-requisite for filing an eviction petition under the Act [*Lakshmidas Ved* vs. *Parag Mawani* [2000 (2) MLJ 456].

The grounds specified under this Act to evict a tenant are :

1. Wilful default	– Section 10(2)(1)
2. Sub-letting	– Section 10(2)(ii)(a)
3. Different user	– Section 10(2)(ii)(b)
4. Acts of waste	– Section 10(2)(iii)
5. Immoral or Illegal purpose	– Section 10(2)(iv)
6. Acts of nuisance	– Section 10(2)(v)
7. Non-occupation of the building	– Section 10(2)(vi)
8. Denial of title	– Section 10(2)(vii)
9. Personal occupation	– Section 10(3)(a)
10.Additional accommodation	– Section 10(3)(c)
11.Demolition and reconstruction	– Section 14.

On these eleven grounds, a landlord can seek to evict a tenant. This section takes away the unrestrictive power of the landlords to evict the tenants. The Section is based on public policy. It is intended to protect the weaker section of the community with a view to ultimately protecting the interests of the community in general by creating equality of bargaining power. Although the Section is purely intended for the protection of tenants only, the protection is based on public policy (*Agarwal* vs *State of Uttar Pradesh* (1974) 2 SCC 472. Section 10 gives considerable security to all occupiers of buildings and restricts the rights of landlord to recover possession of their buildings. It is well settled law that where Rent Restriction Acts are in operation, a landlord cannot obtain eviction of tenant unless he satisfy the requirements of the provisions of these Acts.

'Evict' literally means 'expel by legal process'. Eviction consists in the physical act of throwing out the tenant from the building which he is occupying. The question of evicting a person in execution of a decree can only mean physically throwing out a person persuant to a decree already passed directing delivery of possession of the property. The Act did not intend any difference between the words 'evict' and the words 'direct the tenant to put the landlord in possession'. A single eviction petition can be filed in respect of more than one separate portion let out to a tenant if no prejudice is caused to the tenant. The mere fact that the shops are separately numbered by the Corporation for the purposes of assessment is not a bar for the maintainability for the application of the landlords under Section 10(3)(c). The requirement for own occupation for the purpose of business and the requirements for the purposes of demolition and reconstruction are not contradictory to each other and they can be combined even in one petition – [*Lipton India Ltd.* vs *Sara Uma* 1988(2) MLJ 262.] Common eviction petition against four tenants in the same premises is maintainable where the Government was the tenant of the landlord, it was liable to be evicted under the Rent Act (*Union of India* vs *V.M.Sami* (1960) 1 MLJ 62).

1. WILFUL DEFAULT

The first ground mentioned under Section 10(2)(1) for the eviction of a tenant is wilful default. According to this clause, where the tenant has not paid the rent due to him in respect of the building within 15 days after the expiry of the time fixed in the agreement of tenancy with his landlord, the Rent Controller will pass an order for the eviction. In case there is no such agreement, the last day of the month next following will be taken into consideration.

Notice before filing a petition for eviction on the ground of wilful default is not mandatory. The landlord can file a petition of eviction under Section 10 (2)(*i*) directly without giving notice [*Pandian K.S.* vs. *G. Rukmani Bai and others* 2000 (1) CTC 356].

A mere default in payment of rent is not sufficient to evict a tenant. The default must be wilful default which refers the state of mind of the tenant. Wilful default or intentional default is a default accompanied by a particular state of mind which cannot be directly proved but has to be inferred from the entire complex set of circumstances. To hold that a tenant is wilful in non-payment of arrears of rent, it must be proved beyond doubt that he had exhibited supine indifference and callousness – [*Rangaraju* vs *Parthasarathy* 1964 (1) MLJ 12.] There is a clear difference in law between default and wilful default. While non-payment of rent within the time specified will certainly be tantamount to default, obviously any default cannot be treated in law as wilful

default. The legislature presumably was very cautious of all these distinctions when the Rent Control Act laid down that mere default prolonged or established was not a ground for eviction but that wilful default was alone a ground for eviction.

In [*Lakshmi Bai* vs. *Gita Bai Natwarlal*] (1987 TNLJ 125 at 130), it is pointed out "while ordering eviction on the ground of wilful default, the totality and cumulative effect of all the circumstances should be taken into account and not any particular feature in isolation, to decide whether the default is wilful or mere default". Mere agreement of sale will not terminate the landlord – tenant relationship and the liability of the tenant to continue to pay the rent. The tenant must continue to pay the rent unless there are specific recitals to the contrary in the agreement of sale.(*Kuppammal* vs *Saghunthala* 1987 (1) MLJ 242).

Explanation clause says for the purpose of this sub-section, default to pay shall be construed as wilful if the default by the tenant in the payment continues after the issue of 2 months notice by the landlord claiming the rent.

If there was a continuous default which is unexplained, a Court will be well justified in coming to the conclusion that the default is wilful and deliberate—*Thangasamy Nadar* vs *Pappa* 1988 (2) MLJ 385. The burden to show that the default is not intentional or deliberate is always on the tenant. To arrive at a finding that the tenant is in wilful default, the mere fact that the tenant is in arrears of rent would not be enough and the Court has to consider where there has been intentional violation of the clear obligation to pay rent—[*Venkataramaswami Iyer* vs *Abdul Wahab* (1969) MLJ 139.] The provision contemplates an agreement between landlord and tenant as regards the time for payment of rent. Parties may stipulate for payment of rent in the first of the month for which rent is payable or during the period of the month or at the end of the month (*Venugopal* vs *Doyal Prasad* 1970 (1) MLJ 60). In the absence of a specific agreement between landlord and tenant that the rent may be paid on such time as the tenant chooses. The law compels the tenant to pay the rent regularly month after month where fair rent is fixed by Court, the tenant ought to pay the fair rent after it was determined.

Rent is lawfully due as soon as the proper date for payment has arrived. If any date is fixed, the tenant is bound to pay the rent within fifteen days thereafter. A duty is cast on the tenant to make payment or tender every month if he desires to take advantage of the provisions of the Act [*Anandalwar* vs *Second Judge, Court of Small Causes*, 1949 (1) MLJ 528.] It is pointed out in [*Vasuvaithiar P.* vs. *R.M. Rangoo Chettiar* [2000 (2) LW 708], that the tenant

is under a statutory obligation to pay rent every month according to the agreement. In case the tenant fails to do so, he is a defaulter. Even if the rents are paid during the course of proceedings, it cannot absolve him from contending that he is not a wilful defaulter, especially because when litigation is pending, the tenant should have been more careful to discharge his statutory obligations. It is the duty of the tenant to pay the rent in cash though it is open to the landlord to accept the cheque as a conditional payment of the amount. The question however still remains whether in the absence of an agreement between the parties tender of rent by cheque amount to a valid discharge of the obligation. It would have no application where the landlord had clearly informed the tenant that payment by cheque would not in future be accepted and thereafter the tenant must make payment only in the current coin of the realm and the tenant has no right to insist upon that the landlord should accept the cheque. In a case the landlady issued a notice demanding payment of arrears and there was nothing to signify the willingness of the landlady to receive the payment and the tenant deposited the arrears into Court. It was held that the deposit into the Court was tantamount to payment to the landlady [*Lakshman Rai* vs *Ram Kumar Agarwal* 1979 (3) SCC 779.]

Paying the arrears of rent after the institution of suit by the tenant does not affect his liability to eviction and the Courts' power to pass a decree for eviction. However much the tenant has paid the amount subsequently the default committed by him cannot be cured — (*Kesavan* vs *Vincent Pillai* 1973 TNLJ.1). So also the fact that the landlord has in the past allowed the tenant to pay the rent after the due dates does not amount to waiver of his right to future payments on the due dates. If tenant has not remitted the rent even after knowing the consequences of non-payment, then the default committed by the tenant will be taken to be wilful— [*Jose* vs *Ramathal* 1980 (1) RCJ 418.]

When the relationship is strained, the tenant is duty bound to deposit the rents as and when it becomes due. Any delayed payment can only be construed only as a deposit made at the risk of the tenant. It was held in *Hakim and Co represented by its partners* vs. *Radhakrishnan and others* [2000 (1) MLJ 110] that the tenant contending that the landlord refused to receive the rents for more than two years, but not taking steps to deposit rents in Court invoking Section 8. He is guilty of wilful default.

It is the duty of the tenant to tender full amount of the rent. Failure on the part of tenant to do so will entail the landlord to refund the money orders. The omission on the part of the tenant to pay the full amount of the rent cannot be

anything other than supine indifference and would undoubtedly constitutes wilful default. Likewise where fair rent is fixed by Court, the tenant ought to pay the fair rent after it was determined.

Under Section 22 of the Act, the tenant is not permitted to deduct the unauthorised repair charges from the rent payable to the landlord.

As a matter of fact the Legislature by introducing the explanation to Section 10(2) of the Act has given a helping hand to the tenant not to commit default by enunciating that if after demand for arrears they fail to pay the arrears of rent within the prescribed time then it is statutorily called wilful default. (*Kumarasamy Mudaliar* vs *Radhakrishnan* – 92 LW 77). It has to be found in each case whether there has been a wilful default prior to the issuance of notice and where there has been a continuation of such wilful default even after a notice demanding arrears has been issued, both the circumstances as above are satisfied and it is a case from which the tenant cannot escape. (*Baskaran* vs *Panneerselvam* 1979 TNLJ 1).

It is held in plain language under Section 109 of the Transfer of Property Act, once the lessor transfer the property leased, the transferee of the property becomes subrogated to the lessor/transferor in respect of the rights and liabilities of the property so transfered [*Ramasamy* vs *Thulaja*1992 (1) MLJ 3]. As we have seen earlier, the mere default committed by the tenant will not entail eviction. The default should be wilful, intentional or incidental. The non-payment of Corporation tax by the tenant, when there is no specific undertaking to pay the same by the tenant will not constitute wilful default within the meaning of the Section 10(2)(1). The order of eviction should not have been passed without finding whether the default was wilful. The Court has to give a definite finding about the tender of the rent by the tenant and refusal by the landlord to accept the same.

Once tenant admits default, burden is on him to prove that the default was not wilful [*Muneeruddin K.M. and others* vs. *P.M. Punnoose* 2000 (2) CTC 577].

2. SUB-LETTING

The next ground mentioned under Section 10 is sub-letting of the premises by the tenant without the permission of the landlord. This ground for eviction is mentioned under Section 10(2)(*ii*) a. According to this clause (*i*) there must be a transfer of right under the lease or sub-letting the entire building or any portion thereof and (*ii*) it must be without the written consent of the landlord.

There must be a specific clause in the lease deed authorising the tenant to sub-let the premises or transfer his right. In the absence of such clause, the tenant cannot sub-let the premises. It is evident from reading the Section 10(2) (*ii*) (*a*) that the tenant cannot without the written consent of the landlord transfer his right under the lease or sub-let the entire building or any portion thereof, if the lease deed does not confer him any right to do so.(*VSK Chetty Choudry* vs *Veerasamy* 1972 (1) MLJ 184. Sub-letting is made a ground for seeking eviction by the landlord. Consent may be expressed or implied provided it is in writing.

When the tenant is uanble to establish that he had written consent from the landlord while admitting sub-letting, the landlord is entitled to succeed [*Gulam Rasool* vs. *T.S. Govindarajan and others* 2000 (3) CTC 12].

In order to constitute sub-letting by a tenant there must be a transfer of exclusive possession by the sub-tenant for a definite period for a stated rent (*K.N.Gupta* vs. *Syed Mohideen* 1965 (1) MLJ SN 12). In a case, the tenant has sublet a portion of the premises by running a tea shop while he himself is running in another portion a laundry business. It was held that this is a case of sub-letting (*VSK Chetty Choudry* vs. *Veerasamy* 1972 (1) MLJ 184). The evidence of the name board of the typewriting institute and the licence standing in the name of the sub-tenant will be a case of sub-letting (*M.V. Swami* vs *Ameer Basha and another* 1985 (1) MLJ 53).

Sub-letting means that there is an under tenancy and not a mere occupation by a licencee or an invitee of the premises.

This provision may be compared with the provisions of the Transfer of Property Act 1882 *viz* Section 108 (*j*). Under this clause the lessee can assign his interest whether it is a periodic lease or a lease for a fixed term. However, it is important to note, that this right to assign his interest is available only in the absence of the contract to contrary. Further, the lease is an exception to Section 10 of the Transfer of Property Act. In the case of Tamil Nadu Buildings(Lease and Rent Control) Act, 1960, the provision is clear that the sub-letting is permitted only if there is a clause express or implied in writing. In order to save a tenant from the consequence of eviction on the ground of sub-letting, it must be established that he had consent in writing of the landlord in doing so. Payment of higher rent will not enable a tenant to claim to have had consent in writing of the landlord to sub-let.(*Lalitha Parameswari* vs *Ramasamy* 1989 2 RCJ 420). So also it cannot be claimed merely on the basis of acquiescence by the landlord. If the tenant has sub-let the premises without the permission of the landlord either before or after the coming into force of the Act he is not protected from eviction.

A statutory tenant has merely a personal right to protect his possession and has no estate or interest in the premises occupied by him. So he cannot convey an estate or interest in the premises occupied by him. In case of statutory tenant, there is no transferable interest.

Where a tenant allowed a vegetable merchant to keep baskets of vegetables in a room in the premises on payment of small fee for each basket, there is no sub-letting of the premises or any portion thereof. If at all the merchant was only a licencee. (*Adimoola Nadar* vs *Ranganathan* 1949 (2) MLJ SN 32). The main criterion is whether the tenant had permitted a third party to occupy the premises and had desisted himself completely of the possession of the premises or a part thereof. If so, then he is guilty of sub-letting. If the tenant has permitted another person to use the premises, along with him, it may not amount to sub-letting. To accommodate a guest, even a paying guest temporarily will not constitute sub-letting.

In order to evict a tenant on the ground of sub-letting, there must be transfer of exclusive right to enjoy the demised premises by the tenant in favour of a third party and the said right must be in lieu of payment of some compensation of rent. There cannot be sub-letting unless the lessee parted with legal possession.

The burden of proving sub-letting is on the landlord and even if direct evidence is not there circumstantial evidence could be acted upon. It is for the landlord to establish independently his plea that the respondent tenant has sub-let the premises.

3. DIFFERENT USER

Section 10(2) (*ii*) (*b*) deals with the ground of different user for the purpose of eviction of a tenant by the landlord. Under this clause, the Rent Controller is entitled to order eviction where the tenant had without the written consent of the landlord used the building for a purpose other than which it was leased out. If the tenant wants it to be used for the other purpose, he must obtain written consent of the landlord.

In order to decide whether a building let as a dwelling place is being used for a different purpose, the nature of trade or business carried or the nature of the person coming and going, the duration of their stay, their hours of arrival and departure and purpose of their visits as also the manner in which the conduct themselves on the premises would all be relevant and material. (*Krishnaswami Aiyar* vs *Natesan* 1955 (2) MLJ SN 22). Where the tenancy was for a residential purpose and the tenant kept scrap iron in one room, it was

held that as there was no substantial user, it was sufficient to negative the request of the landlord for eviction. A fugitive sporadic user of the leased premises for a limited period ought not to be taken as the test of conversion to some other use, inconsistent with the use contemplated by the original user – *Abdul Razack* vs *Umapathy* 1965 (1) MLJ SN 41. Unless the premises let for running a tea stall is converted with a different shop by the substitution of another business, mere selling of idlies and vadais procured from outside and not prepared in the premises along with tea, will not amount to carrying different business (*Meenakshi* vs *Harinarayanachar* 1957 (1) MLJ SN 55).

In [*Muthu Thevar* vs. *S. Indirani and another* 2000 (1) MLJ 158], the premises was leased out for running a petty shop but tenant introduced xerox copies machine and doing business. It was held that the tenant had used the building in question for the purpose other than that for which it was leased out.

It was held in [*Buhari Hotels* vs. *Dr. L. Murugan and another* 2000 (2) TNLJ 377] that, it is clear that unless the new business, which the tenant starts is akin or allied or ancilliary to the business which the tenant is already carrying on, it must be held that the building had been put to a different user. In other words, unless the new business has some connection however remote to it may be with the original business started, the tenant cannot escape an order of eviction, if the ground of different user is put against him.

Where the lease was for the purpose of a soda factory but it was used for storing soda manufactured elsewhere, it was held to be different user. (*Chidambaram* vs *Ganapathi Pillai* 94 LW 778). The premises let out for residential purposes was used for playing cards regularly. It amounted to premises being put to use for a purpose other than that for which it was let out(*Yuvaraj* vs *Rajeswari* 1989(1) MLJ 7).

Where the premises was not let out for any specific purpose, the use of the premises for the business of arrack by the tenant instead of textile business will not amount to different user. Even assuming that the tenant put the demised premises for different user as long as the interest of the landlord is not prejudiced a small change in the user would not be actionable (*Ramasamy Gounder* vs *Ranganayaki* 1990 TNLJ 122).

The burden was on the landlord to make out a case establishing the dominant or primary user of the shop for a purpose different from that or which it was let. It was for the landlord to lead proper and sufficient evidence.

4. ACTS OF WASTE

The acts of waste committed by the tenant is another ground for evicton. Where a tenant has committed or caused to be committed such acts of waste as one likely to impair materially, the value or utility of the building, he is liable to be evicted by the landlord according to Section 10(2) (*iii*). The object is to prevent tenants making indiscriminate alterations and additions without the consent of the landlord affecting the value and utility of the building. Because any alteration made by the tenant may likely reduce the age of the building or its value.

The leading case in this respect is [*Damodaran* vs *Loganatha Chettiar* (AIR 1956 Madras 54).] In this case the scope and nature of waste is clearly explained. "It is not waste if the premises is destroyed in the course of reasonable user and any user is reasonable, if it is for a purpose for which property was intended to be used and if the mode and extent of the user is apparently proper, having regard to the nature of the property and what the tenant knows of it, and in the case of business premises to what as an ordinary businessmen he might to know of only such acts which are prejudicial to the interest of the landlord in so far as the premises are concerned and physically and demonstrably lessen the utilitarian value of the building are viewed as acts of waste".

The Legislature has clearly intended to prohibit a tenant from causing damage to the building or doing any act which may affect the utility of the building. There may be cases in which acts of tenants may add to the utility of the building for sometime but they may cause damage to the building. There may be also cases where there might not do any damage to the building but utility of the building might be seriously affected. In either of the cases, the tenant should be held to have committed acts of waste coming under the section (*Shah Jetmull* vs *G.Jumnadas & Company* 1971 (2) MLJ 224).

In [*Sha Nirbhayala Bhahadurmal* vs *Krishna Rao M Nikam* (1982) (2) RCJ 143], it is mentioned that the changing the nature of the demised premises tantamounts to technical waste and the demolition or removal of the doors and shutters, pillars etc. will clearly amount of doing an act, which affects the utility of the building by putting up a better appearance.

It was held in [*Viswanathan A.* vs. *A. Sarangapani* 1999 MLJ (Supp.) 364], that mere commission of damage by itself will not be a ground of eviction. The act of waste complained must be to impair the value and utility of the building permanently and to a substantial degree.

It is only those acts of waste which would very probably impair the value of the building or its utility amount to ground of eviction - [*Narayanasamy T.N.* vs. *N. Govindaraj* 2000 (2) MLJ 65.]

The illustrations given below would indicate what are acts of waste and what are not. The replacement of the tiled roof by a zinc sheet is an act of waste. The construction of an overhead tank on the top floor of the building which is not in a condition to bear the additional weight is waste within the meaning of the Act (*Damodaran* vs *Loganatha Chettiar* 1955 (1) MLJ SN 60). In a case a tenant lowered level of the steps because it was too high and the clients had trouble in going into the shop was held as an act of waste. The replacement of wooden doors with rolling shutter and lowering the floor level in the process is considered as an act of waste considering the age of the building. The user of a garage as a room by the tenant cannot be said to be an act of waste in the absence of evidence to show that such user has materially impaired the value or utility of the building. Putting up a sun shade in front of the shop is not an act of waste.

5. IMMORAL OR ILLEGAL PURPOSES

The next ground for eviction provided under Section 10 is use of building for immoral or illegal purpose. As per Section 10(2) (*iv*), if the tenant has been convicted under any law for the time being in force of an offence of using the building or allowing the building to be used for immoral or illegal purpose, he can be evicted from the building by the landlord. For the application of this sub-section it must be established that (1) the tenant was convicted under any law for his immoral or illegal act and (2) he used the building or allowed the building to be used for immoral or illegal purpose. The scope of this sub-section is discussed in [*Rathnam Naicker* vs *Mani Naicker* 1955 (1) MLJ SN 2]. Merely because a tenant played cards for stakes in the building in his occupation on a solitary occasion and was convicted under the City Police Act, it is almost fantastic to say that the building has been converted into a gambling den. If the main purpose of the lease continues and in the course of carrying out that purpose the tenant indulged in an isolated illegal act, it would not amount to an use for an illegal purpose. Much more than a single instance might be necessary for an inference that the purpose of tenancy has become different.

6. ACTS OF NUISANCE

Section 10(2) (*v*) speaks about another ground of eviction, namely acts of nuisance. In order to evict a tenant on this ground, that the tenant must be

held guilty of nuisance to the occupiers of (*a*) other portions in the same building or (*b*) of building in the neighbourhood. The tenant is source of nuisance either to the occupiers of other portions of the same building or buildings in the neighbourhood. The term nuisance is not defined under this Act. Anything injurious or obnoxious to the community or say members of it or which is annoying or offensive for which legal remedy may be had, fall under the category of nuisance. The nuisance may be public or private, temporary or permanent, occasional or continual. It is an actionable wrong. The question of nuisance is always a question of fact to be determined with reference to all the circumstances of the case.

What is nuisance or annoyance in a particular case may not be nuisance or annoyance in a different case. Each case has to be judged on the facts of the particular case. For a landlady or landlord, who is ailing from some disease, even a noise or disturbance caused by the normal use of the premises may amount to annoyance. The fact that no police complaint was made or no enquiry was conducted is immaterial.

Now let us consider some illustrations for this purpose. Where the tenant and his daughter indulged in quarrels among themselves using vulgar and indecent language, such conduct would amount to nuisance entailing eviction under the Section (*Janakiram* vs *Nagammal* 1958 (1) MLJ SN 5). A person is guilty of nuisance if he converts his house into a kennel and breed dogs or keep ferocious dogs which cause fear and annoyance. But mere possession of a dog or dogs by the tenant will not by itself constitute nuisance within the meaning of the Section (*Govindasamy Naicker* In Re 1957 (2) MLJ SN 14). Mere fact that the tenant brought on the rented premises, persons whom the landlord did not like or with whom the landlord was not in good terms is not a kind of annoyance which the law can recognise or remedy and it cannot be a ground for eviction (*Abdulla J.M.* vs *Abdul Samad* 1957 (1) MLJ SN 20).

A tenant's systematic discourtesy to his neighbour, permitting the sink to become blocked and overflow into the premises of another tenant, tenants persistent noisy abuse of the landlord as thief, liar, murderer, indecent exposure or exhibition of oneself, keeping brothel and all other acts tending to affect public morals are instances of nuisance or annoyance. Other instances are running hospital or sanatorium for infectious deceases, smoke or obnoxious vapour, keeping wild animals, dancing, noisy hammering from workshop etc (*Davy* vs *Subramania Iyer* – 1953 (2) MLJ 625 at 629).

This Section is comprehensive and clear and provides that the acts or conduct complained of against the tenant should be a nuisance to the occupiers of other portions of the same building in neighbourhood.

7. NON-OCCUPATION OF THE BUILDING

Section 10(2) (*vi*) declares that if a tenant fails to occupy the demised premises for more than four months without assigning any **bona fide** reason, he is liable to be evicted on that ground. The two requirements to be fulfilled before an order for eviction can be obtained by the landlord under this Section are (*i*) the landlord must establish that the tenant has ceased to occupy the building for a continuous period of four months and (*ii*) that there was no reasonable cause for the same. The clause applies only to the places other than a hill station. The word 'occupy' means 'to take possession of' or 'to have and have in possession'. The onus of proving that the tenant was not in occupation of the premises for a period of more than four months continuously is entirely on the landlord who alleges the same (*Srinivasan* vs *Ramasamy Chettiar* 1978 (2) MLJ 232). The primary burden of proving the ingredient of Section 10(2) (*vi*) is on the landlord though the tenant cannot be absolved the responsibilities to adduce the necessary evidence because the facts with regard to his occupation are facts within his special knowledge (*Duraiappa Nadar* vs *Thirupurasundari Ammal* 1989 (1) MLJ 89).

Where the tenant has left his furniture in the premises, he is 'occupying it'. The Act does not require that the tenant should carry on the business in order to prevent eviction. It is sufficient if he occupies it. Keeping his furniture in the premises is sufficient occupation within the meaning of the Section (*Abdul Rahim Bros* vs *Selvan Bros* 1956 (1) MLJ 237).

8. DENIAL OF THE TITLE OF THE LANDLORD

Yet another ground for eviction of the tenant is denial of landlord's title. This is provided under Section 10(2) (*vii*). There is one more provision under this Section by the way of proviso to Section 10(1) in this regard.

Under Section 10(2) (*vii*) it must be established that the tenant should have denied the title of the landlord or claimed a right of permanent tenancy. Further such a denial or claim should be a **bonafide**. If these things are satisfied, the Controller will pass the order of eviction and direct the tenant to put the landlord in possession of the building. In case, the Controller is not so satisfied he will make an order rejecting the application.

The second proviso speaks about the jurisdiction of the Civil Court to pass a decree for eviction. This Act does not bar of jurisdiction of Civil Court except to a limited extent, in the second proviso to Section 10(1). The second proviso to Section 10(1) indicates that the landlord shall be entitled to sue and obtain an order of eviction in a Civil Court on any of the grounds mentioned

in Section 10 and Sections 14 to 16 under certain circumstances. An examination of the provisions of the Act reveals that this is the only case where a landlord is given a right to resort to the Civil Court. In all other cases, if the landlord is desirous of obtaining an order of the eviction, he has necessarily to apply to the Controller under Section 10(2) on any one of the grounds mentioned therein.

The proviso contemplates, first, a petition before the Rent Controller himself for eviction and a denial of title in such a proceeding. If the Controller decides that a denial of title is **bona fide** and records a finding in that effect, then the landlord is entitled to sue for eviction of the tenant in a Civil Court. (*Sanjeevi Naidu* vs *Chittibabu Mudaliar* 1953 (1) MLJ 260). If the denial of title had been **bona fide**, the parties would have to be referred to a Civil Court to determine the question of title (*Abdul Aziz Khan* vs *Appachi Gounder* 1957 (2) MLJ 513. So the condition precedent for exercise of jurisdiction by Civil Court is, the denial of title by the tenant before Rent Controller Court and finding by the Controller that the denial or claim of tenant is **bona fide.**

In [*Thanikachala Naicker* vs *Vinytheertha Vinayagar Koil*, (1974 TLNJ 492)] the scope of the jurisdiction is clearly explained. It is not within the jurisdiction of the Rent Control Court to give a final decision regarding the title of the property. This is a question to be decided by Civil Court and the Rent Court has only to examine whether denial of title on the part of the tenant is **bona fide** or not. Where the dispute is as regards the relationship of landlord and tenant and such a dispute can be decided only by the Rent Controller, this is an incidental question to be decided by the Rent Controller, while deciding the question as to whether the grounds for eviction has been established. Such an incidental question has to be decided by the Rent Controller before he passes an order of eviction against the tenant and therefore, as such a question the parties cannot be referred to Civil Court.(*Kuppa Pandithan* vs *Marudhala Pandithan* 1979 (1) MLJ 503). In [*Kesava Naicker* vs *Sivagnana Mudaliar* 93 LW 484], it is further discussed. If the Controller decides that there is no such relationship, the proceeding has to terminate without deciding the main question of eviction, but if on the other hand if it is found that the relationship is that of landlord and tenant the further proceedings have to go on.

Where the claim of the tenant is a **bonafide** one, then the proviso will apply. Where the lease agreement provided for a period of fifteen years and the landlord admitted that the site belonged to Devasthanam and subsequently the lessee on coming to know of the fact, that the Dewasthanam had obtained

a decree for eviction against the lessor, wrote a letter calling upon him to make good of the defects in title and satisfy him that the lessor had a clear and complete title, it was held that the denial of title to grant an effective lease cannot be said to be not **bona fide**. The case falls within the purview of the proviso.(*Seshadri* vs *Ramasamy Pillai* 1950 (2) MLJ SN 24)

The denial of title may be pleaded by the tenant before filing the petition for eviction or it may be made in the course of the eviction proceedings. From the language of the proviso itself, it is quite clear that a Civil Court is only in a different Forum than the Rent Control Court and even in such a suit, if it is based on tenancy, eviction can be ordered only as per the provisions of the Rent Control Act (*Nainammal Bibi* vs *Umma Habiba Bi* – 1975 (2) MLJ 29).

9. PERSONAL OCCUPATION

Under Section 10 3(*a*) a landlord can apply to the Controller for an order directing the tenant to put him in possession if the landlord requires it for his occupation. There are 3 clauses under Section 10(3) (*a*). Clause (*i*) relates to landlord's request for his occupation of a residential building. Clause (*ii*) relates to keeping a vehicle in the non-residential building. Clause (*iii*) related to requirement of non-residential building for the purpose of carrying on a business. This provision is subject to the condition that it must be required for the ***bona fide*** personal occupation. It must be required for the landlord's own occupation or for the occupation of the any member of his family provided, they are not occupied a residential building of their own in the city, town or village concerned.

A landlord can ask for eviction of a residential building for residential purpose and non-residential building for non-residential purpose (*Lakshmanan* vs *Hajee Alavudeen Saheb Sons* 1980 (1) MLJ 9. Section 3(*a*) compartmentalises the nature of the buildings and the persons can obtain possession of a residential building for his own occupation only for a residential purpose and similarly a person can obtain vacant possession of non-residential building only for the purpose of carrying on his own business. In other words, Section 10(3) (*a*) compartmentalises the requirements of the landlord with reference to the nature of buildings.(*Rangaswamy Reddiar* vs *Jayaraj*1978 TLNJ 9).

(i) Recovery of residential building: Clause (i).

If it is a residential building, the landlord will have the right to recover possession of it, if he has no other residential building of his own and in a similar way if it is a non-residential building, the landlord will have the right

to recover possession if he has no other non-residential building of his own (*Chellammal* vs *Accommodation Controller* 1967 (2) MLJ 453).

The dominant purpose of letting will determine the character of building whether it is residential or non-residential.(*Balakrishna Menon* vs *Govindan* 92 LW 56) In the absence of any definite evidence with reference to the nature of the building that has been let out, the Court can only turn to the user of premises and the acquiescence on the part of the landlord.

Under Section 10(3) (*a*) (*i*) the landlord is bound to prove that he is not occupying any buildings of his own or that of the members of his family in the Town or City as the case may be. It is well established by a series of decisions of the Court which is not disputed either, that it is not for the tenant to dictate as to what portion the landlord should reside for the own purpose. It is entirely a decision with the landlord which a tenant cannot object. In other words, the tenant has no right to dictate to the landlord which house he should choose (*Muthiah Asari* vs *Ramanathan* 1982 TNLJ 21).

Tenant cannot dictate either terms to landlord or how else landlord can adjust without evicting tenant. Further it is for the landlord to decide the choice of town, where he wishes to live and not open to the tenant to say that he has better accommodation elsewhere. There is also no basis in the tenant contending that persons who had occupied high position and living in more comfortable accommadation would not live in a small house after retirement. [*Balambal P.* vs. *Major General (Retd.) D.K. Moorthy and another* 2001 (1) TNLJ 199] in [*Nazeer* vs. *N.T. Thayammal,* (2000) 3 LW 901], it was held that inconvenience or lack of amenities is a matter on which the tenant has no say when the landlady proves her ***bonafides*** and wants to occupy her own buildings, she is entitled to an order of eviction. The contention of the tenant it is below her status to reside in the schedule building has no merit.

In case where a landlord who is in occupation of a rented building seeks to evict his tenant from his own building on the ground that he is himself under orders of eviction and therefore requires the building, it is not obligatory to show that he has resisted the eviction proceedings against him where there are no reasonable chances of success. In the absence of collusion or *malafides* a person is at liberty to decide for himself whether to resist a case against him or not.(*Subbiah Gounder* vs *Rami Gounder* 1957 (1) MLJ SN 18).

(ii) Requiring the building for keeping vehicles and for carrying a business: Clauses (ii) and (iii).

With reference to non-residential buildings, the Act makes a distinction between two sets of non-residential buildings one is under section 10(3) (*a*) (*ii*)

and the other under Section 10(3) (*a*) (*iii*). The first one is for the purpose of keeping a vehicle or adapted for such use. The second is for the purpose of carrying on his business.

For the purpose of obtaining possession of non-residential building for keeping his vehicle, the landlord has to satisfy two conditions; namely (*i*) that the non- residential building is to be used for the purposes of keeping a vehicle or adapted for such use, (*ii*) he or any member of his family requiring the said building, is not occupying any such building. The vehicles in question are in the possession of the landlord. A premises adapted for such an use means only that already at the time of the application, it was adapted for keeping a vehicle. Adapted ordinarily means suitable. If the premises in question could be remodelled or made fit for the purpose of keeping vehicle, it can be said to be adapted for such a use.

For obtaining possession of non-residential building for carrying on business under Section 10(3) (*a*) (*iii*) the following requirements must be satisfied:—

(*i*) the building should be non-residential in character,

(*ii*) the landlord should be carrying on business on the date of his applying for eviction,

(*iii*) the landlord should not be occupying any other non-residential building belonging to him for the purpose of his business, and

(*iv*) the landlord's claim is ***bona fide*** for his business needs and not based on oblique motives like trying to obtain more rent or to harass the tenant.

[*Bank of Baroda represented by the Chairman* vs *Mahendra Dada and two others* 1982 (II) MLJ 85 at 87]. Where a landlady requires a building for his son who is to set up a clinic after completing the medical course in six months time, the tenant cannot plead and insist that she should wait till the completion of course and then file the petition (1997-2 LW 607)

The opening of a branch office by the landlady's son would be sufficient ground to enable the landlady to ask for her own premises on the ground that it is required for her son's business (*Anandayee* vs *S.M.Khaja & Co.* 1967 (1) MLJ 368 at 370). The eviction petition by an advocate for carrying on the profession of an advocate must be regarded as business for the purpose of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and the appellant must be held to be entitled to recover possession for the purpose of carrying

on the profession of law (*Subramania Mudaliar* vs *Kolapur Traders* 1982 TNLJ SC 1). The word 'business' has no technical meaning but is to be read with reference to the object and intendment of the Act in which it occurs. What constitutes 'carrying on business' is essentially a question of fact or a mixed question of fact and law. Each case will have to be decided on facts and no general proposition can be evolved as to what constitutes 'carrying on business'. (*Govinda Chettiar* vs *Pachayappa Pandithan* 1960 (2) MLJ 382 at 384). The expression for 'his own occupation' cannot be restricted only to the occupation of the landlord himself, but has to be interpreted to include the landlord's family and dependents.

In [*Jailani Beevi P.K.M.S* vs. *J. Madanlal* [2001 (1) MLJ 823], the owner of the building was residing in the first floor along with her family. Her husband was doing business in a smaller area in a nearby locality. The business was not doing well. So the landlady filed a petition under Section 10(3) (*a*) (*iii*) whereby a demand was made for occupation of the ground floor for accommodating her husbands business. The court held that she can ask for premises in the hope that the business may improve and the petition is maintainable.

Where a landlord alleges that he requires the premises for his own occupation and he intends to occupy it after its demolition and reconstruction, it is held that the case falls under the need of personal occupation and not under eviction for demolition.

A subsequent purchaser has no right to continue the proceedings instituted by the erstwhile landlord under Section 10(3) (*a*) (*iii*) as the right is a personal right [*Srinivasan and another* vs. *Santhana Selvaraj and another* 2000 (2) TNLJ 117].

NO FURTHER EVICTION AFTER RECOVERY

The second proviso under Section 10(3) is explicit that if a landlord has obtained an order under Section 10 (3) (*a*) he cannot obtain further orders of eviction in respect of any other non-residential building of his own. Once the landlord gets relief under the said provision, Section 10(3)(*a*) he cannot make use of the same provision in respect of yet another building, even though his claim may be ***bona fide*** (*Jayaraman* vs *Ramalingam* 1973 TNLJ 393 at 395).

RECOVERY OF BUILDING BY RELIGIOUS, CHARITABLE, EDUCATIONAL OR OTHER PUBLIC INSTITUTIONS

Section 10(3)(*b*) is a special provision applicable to religious, charitable, educational or other public institutions. According to this clause, the

institutions may apply to the Controller for the purpose of institution even though they are in occupation of another building in the same town.

10. ADDITIONAL ACCOMMODATION

The ground of additional accommodation for eviction is embodied under Section 10(3) (*c*). A separate provision is made in the Section 10(3)(*c*) to cover a case of a landlord who is occupying only a part of residential or non-residential building. In that case he is entitled to evict the tenant occupying the remaining part of the building if he satisfies the authority that he requires additional accommodation for residential or for the purpose of his business. (*Abdul Suban Sait* vs *State of Madras* 1959 (2) MLJ 387) There is no compartmentalisation in Section 10(3) (*c*) as in Section 10(3) (*a*).

Addition means in addition to what is existing. This is the reason that the landlord who is using a portion for residential purposes must require the additional accommodation for residential purposes which will constitute 'addition'. Likewise, the reverse is the case for non-residential purposes. Under this Section only requirement is that the landlord should be in the occupation of a portion of the building and the additional accommodation sought for should be ***bona fide***. The requirement of the landlord is to be taken to include the requirements of the members of his family also because each tenement would be a unit and not a part of the unit. It is only where there is a unit of accommodation out of which a part is under the tenancy and the remaining part is in the occupation of the landlord, the provision is attracted.

When a superstructure consists of two or more tenements and each tenement is an independent unit, distinct and separate from the other, the provision would be of no application because each tenement would be a unit and not a part of the unit. It is only where there is a unit of accomodations out of which a part is under the tenancy and the remaining part is in the occupation of the landlord, the provision is attracted.

TENANCY FOR A FIXED TERM

Section 10(3) (*d*) is an important provision which says, if the tenancy has been for a term, the landlord will not be entitled to obtain possession until the term expires. The right under Section 10(3) is subject to the term agreed upon between the parties. During this duration he cannot apply for possession of the building for his own ***bona fide*** additional accommodation.

Special provision for the members of Armed Forces :

Under Section 10(3A) where the landlord has been or is a member of Armed forces, he or his members of family may apply to the Controller for the recovery of the building for the residential purpose.

No eviction of persons in essential services and educational institution :

Under Section 10(4), no order for eviction shall be passed under sub-sec(3), (*i*) against any tenant who is engaged in an employment or class of employment Notified by the State Government as an essential service or (*ii*) in respect of any building which has been let for use as an educational institution.

Landlord's failure to occupy :

Section 10(5) imposes duty upon the landlord to occupy the building after the eviction, within the stipulated time. Otherwise the tenant is entitled to apply for restoration of possession. The Legislature in its wisdom has provided against improper eviction by unscrupulous landlord by providing a safety valve in Section 10(5)(*a*) of the Act which enables the tenant to ask for restitution, in case the landlord fails to occupy the premises. (*Solai Nadar* vs *Guruswami Nadar* 1969 (1) MLJ 629 at 634). This is in order to ensure the provisions for eviction are not abused.

Other provisions :

Section 10(6) speaks about the filing of petition which is frivolous or vexatious against the tenant, for which the Controller may direct the landlord to pay compensation to the tenant not exceeding 50 rupees. Section 10(7) creates a fiction as to continuation of the tenancy where the application of the landlord is rejected. Section 10(8) imposes a restriction on a class of persons who are included within the definition of the word 'landlord'. Those persons (like agents) alone are entitled to apply for the eviction of a tenant only with the previous written consent of the landlord. The persons dealt with under Section can be divided into 3 categories (*i*) person who own the building as absolute owner, (*ii*) a person who owns it as co-owner along with another owner or other co-owners and (*iii*) a person who acts on behalf or for a benefit of the beneficial owner of the building such as Agent, Trustee or Guardian etc (*Vasudevan* vs *Ramachandran* 1980 TNLJ 160 at 168).

11. DEMOLITION AND RECONSTRUCTION

The last ground of eviction is provided under Section 14 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 namely demolition and

reconstruction. The title given to Section 14 is 'recovery of possession by landlord for repairs and for reconstruction'. The clauses (*a*) and (*b*) are relevant for our purpose. The landlord may apply to the Controller for the recovery of the building if the building is ***bona fide*** required by him :

(1) for the purpose of carrying out repairs. Section 14(1) (*a*).

(2) for the immediate purpose of demolishing it and erecting a new building on the site of the building. Section 14(1) (*b*).

The sub section (2) deals with the undertakings given by the landlord before the Controller. The clause (3) prohibits the conversion of residential building into non-residential and ***vice versa***. The clause (4) speaks of the legal fiction regarding continuity of the tenancy.

Now let us consider the two aspects of the Section 14 and other related matters in detail.

(1) Recovery of the building for carrying out repairs :

Section 14(1) (*a*) is an enabling Section entitling a landlord to take temporary possession of a building for purposes of effecting repairs and for being re-delivered to the tenant after the repairs are over. This is one of the Sections in the Act which salutary in scope and beneficial to the tenant.(*N.P. Rao* vs *Premier Auto Electric Company* 1969(2) MLJ SN 16).

There are two requirements to be satisfied for the application of Section 14(1) (*a*). The two requirements are, firstly the building is ***bona fide*** required by the landlord for carrying out repairs and secondly such repairs could not be carried out without the building being vacated by the tenant in occupation. (*Ashokraj Kandaswamy* vs *Thiruvenkataswamy* 1975 TNLJ 237). If these requirements are fulfilled, then the Controller has no discretion but to pass an order directing the tenant to deliver possession of the building to the landlord. The repairs to be carried out must be major one, without vacating the building it could not be carried out and it will not cover to carry out white washing and fitting up the doors etc. Further, if an order is passed under Section 14(1) (a), it is an order which would refer to totality of lease hold and not a part thereof. Therefore, a portion alone cannot be ordered under this clause.

(2) *Recovery of building for demolition and reconstruction:*

In *Savundappa Chettiar* vs *Indrani Ammal*, 83 LW 705 at 708, the scope of clauses (*a*) and (*b*) of Section 14 (*i*) is explained. There is a distinction

between a claim for eviction made by landlord under clause (*a*) and clause (*b*) of Section 14 of the Act. When a landlord ***bona fide*** requires immediate possession of the building for demolishing it and reconstructing a new building, the statutory tenant ceases to have any right in the building. But when the landlord ***bona fide*** requires the building for carrying out repairs which cannot be carried out without the building being vacated, he has to give an undertaking before the order of eviction is passed in his favour that he will offer the premises again to the tenant on completion of the repairs.

When the intention of the landlord for demolition and reconstruction is proved to be genuine and not spurious or suspicious, he will be entitled to an order of eviction under Section 14(1)(*b*) whether or not the condition of the building is such as to require immediate demolition, the age and dilapidated condition of the building not being ***sine qua non*** for such eviction 1982 (1) MLJ 94).

Under this Section, only factor to be proved by the landlord is that his requirement of the building for demolishing it for the purpose of eviction is ***bona fide***. The term '***bona fide***' includes the means of the landlord for the reconstruction of the building and other steps taken by him in this regard. The condition of the building is not a relevant consideration for determination of such ***bona fide*** (*S.S.Misrilal* vs *The Accommodation Controller, Madras – 2* – 1989 (1) RCJ 121 at 123. Apart from this, the Controller will take into the consideration of conditions of the building as a relevant factor. The Section 14(1)(*b*) does not state that old and dilapidated buildings alone are governed by Section 14(1)(*b*). If the landlord comes to Court stating that the building is old and dilapidated, he must prove it. The principle laid down in metal waves case (1979 (2) AIR SC 1559) will not apply to all petitions under Section 14(1) (*b*).

Thus, for ordering eviction on the ground of demoltion and reconstruction, the building need not be in imminent danger. The Rent Controller has to take into account (1) ***bonafide*** intention of the landlord far from sole object only to get rid of tenant (2) age and condition of the building and (3) the financial position of the landlord to demolish and construct a new building according to the statutory requirement. [*Viswanathan* .S vs. *A. Sarangapani* 1999 MLJ (Supp.) 364] when the ingredients of the Section are satisfied, the Court can presume that the landlords' claim is ***bonafide.*** It is for the tenant to prove the contrary by letting in rebuttal evidence. [*Puttalingam L.* vs. *L. Sivalingam* 2001 (1) LW 153]

Mere change of staircase and taking it out of its place and putting it in the room occupied by the tenant or changing the front view of the upstairs will not amount to demolition (*Motilal* vs *Azeem* 87 LW SN 106). Alterations and conversions do not mean demolition. The demolition is to obliterate substantially the old building and the construction must bring into being a new building (*Thirupathi* vs *Maimoon Bibi and others* 1983 (1) RCJ 121 SN). The desire of the landlord to put the property to a more profitable use after demolition and reconstruction is also a factor which may be taken into account in favour of the landlord (*P.N Shenoy* vs *B.V. Shenoy* 1970 (1) SCJ 499 at 502). Where the landlord enters into a joint venture with the owner of the adjacent property for the purpose of constructing a four storeyed building in the entire area, consistent with the modern design which will increase the value of the property, the claim of the landlord can certainly be entertained on the ground of putting the property with a profitable and better use, even though the condition of the building is not dilapidated (*P.Orr and Sons Limited* vs *M/s. Associated Publishers* 1990 TNLJ 194 at 197).

With respect to the question whether the demolition should be total, the answer is given in *A.A.Henry* vs *JVK Rao* 1971 (2) MLJ 297 at 305.

1. The demolition may be part of the building *i.e.* the entire ground floor, entire first floor or the entire second floor.

2. There can be demolition work in the ground floor even when the first floor is left undisturbed.

3. The demolition can be in a ground floor or in a portion of the first floor. It need not be of the entire ground floor or the entire first floor.

4. In such a case the building after the fresh work is finished, would comprise partly of the old building and partly of the new building.

5. The fresh work may be outside in the exterior or inside in the interior. If the fresh work undertaken, though in a portion of the building and in the interior is such that the completed work involves demolition and also substantial structural alterations so as to change the identity and give a new look altogether, Section 14 (1)(*b*) would clearly apply to such a case.

6. The words 'rebuilding' 'reconstruction' and 'erecting a new building' have the same meaning.

7. Erection of a new building may be by the use of brick and mortar or by steel or even by wood work or may be by the use of all the materials. The crucial test is "Is it not erecting a new building or reconstructing or remodelling".

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The scope of this clause is clearly pointed out in [*Neta Ram* vs *Jiwanlal* 1962 (2) SCJ 270 at 273]. The landlord has to satisfy the Controller about the genuineness of his claim and this should be established by looking at all the surrounding circumstances such as the condition of the building, its situation, the possibility of its being put to more profitable use after reconstruction, the means of the landlord and so on.

LANDLORDS'S UNDERTAKING

Section 14(2) prescribes a condition precedent to be satisfied before the Rent Controller could pass an order directing the tenant to deliver possession of the building under Section 14. These conditions are two in number, the one referable to the ground under Section 14(1)(*a*) and the other referable to the ground under Section 14(1)(*b*). [*Alamelu* vs *Vishalakshi Ammal* 91 LW 423 at 425.]

(1) UNDERTAKING UNDER SECTION 14(2) (a)

Under Section 14(2) (a), it is obligating on the part of the landlord to give an undertaking to the effect that the building will be, on completion of the repairs, offered to the tenant, who delivered the possession of the property in pursuance of the order under sub-section 1 of Section 14 for his re-occupation before the expiry of three months from the date of recovery of the possession by him.

(2) UNDERTAKING UNDER SECTION 14(2) (b)

This has been clearly explained in (*Alamelu* vs *Visalakshi Ammal* 91 LW 423 at 428) as follows. "There are two limbs to the undertaking in Section 14(2) (*b*). One is that the work of demolition of any material portions of the building shall be substantially commenced by him not later than one month from the date of recovery of possession of the entire building. This time limit is unalterable. The second limb of the undertaking is that the demolition shall be completed before the expiry of three months from the date the landlord recovers possession of the entire building. The time limit of three months in the second limits can be extended by the Rent Controller for reasons to be recorded in writing. Consequently, the undertaking with reference to both these limits may be given before an order can be passed directing the tenant to put the landlord in possession of the building". The undertaking given by the landlord in the deposition is sufficient for satisfying the requirement of Section 14(2) (*b*) of the Act (*Thayammal* vs *K.Subramanian* 1989 (1) LW 228 at 231).

RE-OCCUPATION BY THE TENANT

The Sections 15 and 16 deal with re-occupation by the tenants after the repairs and in case demolition is not carried out respectively. The tenant has a right of re-occupation under Section 15 immediately after the completion of repair work. For this purpose the landlord has to give notice to the tenant and tenant had to accept the offer of re-occupation within the stipulated time. Otherwise, the right to re-occupation will come to an end.

It is provided under Section 16, if the work of demolishing any material portion of the building has not been substantially commenced by the landlord within the period of one month in accordance with his undertaking, the tenant may express his intention to re-occupy. If the landlord had not put him in possession, then the tenant may make an application to the Controller in this regard. Then the Controller will order the landlord to put the tenant in possession of the buidling on the original terms and conditions.

INTERFERENCE WITH AMENITIES

Section 17 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is in the nature of safeguarding the interest of the tenant as to continued enjoyment of amenities. The Section says that no landlord, shall without just or sufficient cause cut off or withheld any of the amenities enjoyed by the tenant or be in any way responsible for the amenities being cut off or withheld. In the case of contravention of the provision, the sub-section (2) of Section 17 says, a tenant in the occupation may present an application to the Controller complaining of such contravention. On merits of the petition by the tenant, the Controller will pass an order, for restoration of amenities. This provision has been made in this Act, in order to check the prevalent tendencies on the part of some landlords who resort to extra legal ways in order to make the tenant pay higher rent and make him vacate the premises by cutting of supply of electricity, water etc.

The explanation clause mentions what are the amenities for this purpose. According to the explanation, the expression 'amenities', includes supply of water, electricity, passages, staircase, light, lavatories, lifts and conservancy or sanitary services.

The leading case with respect to this is [*Narayanan* vs *Appukutty* (1955(2) MLJ SN 31)]. In this case it is pointed out that an interference with the convenience would interfere with the proper enjoyment of the demised premises and constitute an infringement under the Section. Further that it must be shown that the landlord did so without just or sufficient cause.

The Section 17(5) provides the payment of compensation to the other party if the complaint is frivolous or vexatious.

EXECUTION OF ORDERS, APPEAL AND REVISION

Sections 18, 23 and 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 deal with the Execution, Appeal and Revision respectively. Section 18 speaks about Execution of orders by the Controller. The Section 23 makes a provision for Appeal against the order of the Controller. Section 25 provides the remedy of Revision to High Court.

1. EXECUTION

Section 18 deals with the Execution of orders by the Controller. It says : (i) Every order made by under Sections 10, 14, 15, 16 and 17 and every order passed on Appeal under Section 23 or on Revision under Section 25 shall be executed by the Controller, as if such order is an order of a Civil Court and for this purpose, the Controller shall have all the powers of a Civil Court. (ii) An order passed in execution under sub-section (1) shall not be subject to any appeal or revision.

This Section empowers the Controller to have all the powers of a Civil Court in executing the orders.

The Section was amended in the year 1973. After the amendment, the Rent Controller has all the powers of the Civil Court in execution of the orders passed under the Act. Previously it was provided that every order for eviction passed by the Rent Controller or an Appellate Authority should be executed by the specified Court as if it were a decree by that Court.

The Rent Controller has power of executing the orders passed under Sections 10, 14, 15, 16 and 17. Further he can execute every order passed in an appeal under Section 23 and in a Revision Petition under Section 25 against the orders of the Rent Control Court. Sections 10, 14, 15 and 16 deal with eviction of tenants and Section 17 is relating to interference with enjoyment of the amenities. Section 18 gives all the powers of Civil Procedure Code to the Rent Controller [*T.Sivasankaran* vs *H.K.N Kacharlal Sowcar* 1984 (1) MLJ 155]. There is no appeal or revision against the orders passed in execution proceedings.

Under the new provisions, the Rent Controller, executing it remains a Rent Controller but the order shall be executed, as if it is a decree of Civil Court. (*Ramanujam Naidu* vs *Panchanathan Mudaliar* 93 LW 136 at 139).

THE SCOPE OF EXECUTION

The executing Court has no right to go into the question whether the finding reached by the Rent Controller on the question whether the need of the landlord was ***bona fide*** or not. Its duty is to execute the order of evictions as it stands. (*Shanmugham* vs *Satyanarayana Prasad* 1964 (2) MLJ 96). A Court executing the decree cannot go behind the decree between the parties or the legal representatives. It must take the decree according to its tenor and cannot entertain any objection that the decree was incorrect in law or in facts unless it is set aside by an appropriate proceeding or in Appeal or Revision. A decree even if erroneous is still binding on parties (*Vasudev Rajubhai* vs *Abdul Rahim* 1970 RCJ 716). If there is a devolution of the interest of the landlord it is equally the duty of the executing Court to execute the order of eviction at the instance of the successors. (*Shanmugam* vs *Satyanarayana Prasad* 1964 (2) MLJ 46 at 97).

In [*Alagappa Chettiyar* vs *Perumal Swami* (1974 TNLJ 483)], the landlord filed an execution petition. The executing Controller has virtually varied the order of execution and granted six months time from the date of the order. It was held that this is wholly wrong and is without jurisdiction. There is no provision for the Controller who execute an order of eviction to stay the Execution Petition.

If subsequent to the orders of Eviction Petition, the premises has been sold to purchaser at the revision stage and the purchasers are impleaded as Respondents along with the original landlord, the purchasers are entitled to execute the right of eviction which vested in the original landlords (*Thangaswamy Nadar* vs *Pappa & Others* 102 LW 223). When during the eviction proceedings the landlord died and the daughters were brought on record, it was held that the partition amongst them could not be the concern of the tenant at all and he could not take advantage of the partition, denying the landlord the fruits of the order of eviction(*Mohammed* vs *Saifuddin* 94 LW 387). When the execution petition filed, if the tenant had died, all the heirs of the deceased must be brought on record. The Rent Controller has got the power to order restitution, for an application for restitution is only an application for execution. The Rent Controller has jurisdiction to order re-delivery of the property to the evicted tenant consequent on his setting aside the order of eviction under Section 18 of the Act (*T.S.Pichaiya, Tuticorin* vs *Rent Controller, Tuticorin and another* 1983 (1) MLJ 18 at 25. Section 18 gives all the powers of Civil Procedure Code to the Rent Controller including the power to order restitution (*T.Sivasankaran* vs *H.K.N.Kacharlal Sowcar* 1984 (1) MLJ 155).

No Appeal or Revision against the order passed in the proceeding for execution of the order of execution [Section 18(2)]. The reason for providing this provision is explained in [*S. Mohamed* vs *State of Tamil Nadu represented by Secretary* 1984(2) MLJ 326]. A landlord who is urgently in need of his building can be kept at abeyance by an unreasonable tenant preferring an appeal or revision against the order of execution and drag on the matter endlessly. It is in order to prevent such a calamitous situation, the Legislature has advised by and designedly enabled sub-section (2) and specifically provided that an order passed in execution under sub-section (2) shall not be subject to any appeal or revision and Section 18(2) is not violative of Articles 14 or 19 of the Constitution.

2. APPEAL

The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is a self-contained one containing the provisions for appeal and revision and enabling an aggravated party to challenge the correctness of the order passed by the authorities under the Act in the manner provided thereunder and no more. (*Hameed* vs.*Kanniammal* 1981 (1) MLJ 477).

For the purpose of this Act, the Government may by general or special order Notified in the *Tamil Nadu Government Gazette* confer on such Officers and Authorities as they think fit, the powers of Appellate Authorities - Section 23.

Any person aggrieved by an order passed by the Controller may within 15 days from the date of such order prefer an appeal in writing to the Appellate Authority having jurisdiction. On such appeal being preferred, the Appellate Authority may order stay of further proceedings in the matter pending decision on the appeal.

The Appellate Authority shall call for the records of the case from the Controller and after giving the parties an opportunity of being heard and if necessary after making such further inquiry as he thinks fit either personally or through the Controller, shall decide the appeal. The decision of the Appellate Authority shall be final and shall not be liable to be called in question in any Court of Law, except as provided in Section 25.

Appeal is a continuation of the original proceeding and the Appellate Authority would therefore have all the powers which the Rent Controller had when he was hearing the petition as original authority. It has the same powers and performs as nearly as possible the same duties as are conferred on the Rent Controller in the matter of fixing fair rent. (*Patel* vs *Ponnayya Nadar* 1959 (1) MLJ 32 at 35).

Section 23 (*b*) says 'any person aggrieved by an order' may prefer an appeal. In order to maintain an appeal, the person seeking to file an appeal should be a person aggrieved by the order under appeal. Where a person who has no interest whatsoever in the subject matter of the proceeding at the time when the proceedings were initiated, he cannot claim to be a person aggrieved by an order merely because he acquired certain rights during the pendency of the proceedings and the order was made against his predecessors in title. Likewise a party who has consented to an order cannot in law be deemed to be a person aggrieved by such an order.

The functionaries under the Act are authorities with jurisdiction to enquire into applications for eviction, the fixation of fair rent etc, and though the entire procedure applicable to Civil Courts cannot be applied to those authorities, yet the Rules of justice, equity and good conscience shall be invoked to relieve the difficulties in a statute like the present. (*Kannappa Nadar* vs *Krishnasamy* 1981(1) MLJ SN 18). The provisions clearly indicate that the Code of Civil Procedure was not intended to be generally applicable to the proceedings under the Act. (*Fernandes* vs *Ranganayakalu Chetty* 1952(2) MLJ 445 at 447). As far as the Rent Controller and Appeallate Authority created under the Act are concerned, it is clear that such authorities are ***persona designata*** and Legislation such as Limitation Act applicable to Court cannot be invoked in proceedings before such ***persona designata*** (*Eswaran* vs *Palaniammal* 1974 TNLJ 380). Where a special law or local prescribes a period of limitation the provisions of the Limitation Act would not apply. (*Murugesan* vs *Hameed Maraicayar* 1956 (1) MLJ 238 at 239). However Section 5 of the Limitation Act applies to the proceedings under Section 23 of the Act. On the matter being referred to Division Bench in view of the conflicting decisions it was held for the purpose of Sections 3 (5) and 29 (2) of the Limitation Act, the Applleate Authority is a Court and that Section 5 of the Limitation Act is applicable to an appeal preferred by the petitioner filed before the Appellate Authority under Section 23(1) (*b*). (*Rathinasamy* vs *Komalavalli* 1981 TNLJ 288).

As we have seen earlier, the appellant must be an aggrieved person by an order. So an order in the interlocutory application refusing to take a preliminary issue of maintainability is not an appellate order as it does not affect the rights of parties (*Devadoss* vs *Velu* 1984(1) MLJ 301 at 306. All interlocutory orders passed during the proceedings under the Act cannot be said to be orders coming within the meaning of Section 23(1) (*b*) of the Act but only orders which affect the rights and liabilities of the parties in the sense that they become final orders though passed on interlocutory application such as refusing to set

aside an exparte order etc are appealable(*Chinnaraju Naidu* vs *Bhavani Bai* 1982 (1) RCJ 557 at 569). The order appointing a Commissioner is only a procedural one and does not affect the rights and liabilities of the parties. Hence no appeal lies(*V.K.Govindarajulu* vs *T. Govindarajulu* 1989 (1)LW 540 at 542.

An Appellate Authority under the Special Act has no inherent powers which may be possessed by ordinary Appellate Court of the land. Accordingly the Appellate Tribunal has no power to remand a case for fresh disposal and an order so remanding must be quashed (*Rangaswami Naidu* vs *Third Judge, Court of Small Causes* 1949 (1) MLJ SN 24). But it has an inherent power to set right mistakes made by inadvertence. The Appellate Tribunal under the Act has no jurisdiction to order eviction on a ground which was not even mentioned in the landlord's application for eviction (*Govindaswami Chetty* vs *Third Judge,Court of Small Causes*, 1948 (2) MLJ SN 76). When a landlord filed an appeal on the ground that the quantum of fair rent fixed by the Rent Controller is low, the Appellate Authority can only dismiss the appeal or grant enhancement, but cannot reduce the amount unless the tenant has also filed an appeal questioning the grant.(*K.Khasim Khaleel* vs. *State of Tamil Nadu represented by Accommodation Controller, Madras,* 1982 (1) MLJ 273 at 274).

3. REVISION

Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 deals with High Court's revisional power. This power is supervisory in nature. Any person aggrieved by an order of the Appellate Authority may apply to the High Court. The revisional power is given to High Court to satisfy itself as to :

(*a*) The regularity of such proceeding, or

(*b*) The correctness, legality or propriety of any decision or order.

If the High Court satisfies, it will pass orders to modify, annul or reverse or remit the decision or order. The time limit given under Section 25(2) is one month from the date on which the order or proceeding to which the application relates, is communicated to the applicant. The High Court has discretion to allow one more month for the filing of such application. This section was amended in the year 1973. The main purpose of the Amendment is to take away the revisional jurisdiction of the District Judges against the order of the Appellate Authority.

THE SCOPE OF SECTION 25

The scope of the proceedings under Section 25 of the Act has been repeatedly held to be wider than that available to the Court under Section 115

CPC (*Venkataramanaswamy Iyer* vs *Abdul Wahab* 1969 (1) MLJ 137 at 140). The scope is wider and is not confined to the question of jurisdiction only. This revisional jurisdiction is paternal and supervisory in its nature (*Subbier* vs *W.P.Chetty* 1958(2) MLJ 583). The Revisional Court ought not to enter into a discussion about the existence of ***bona fides***, as the power of interference of a Court exercising revisional jurisdiction is limited and circumscribed. It can interfere only in a case where the order of the lower court presents a material irregularity or want of jurisdiction or in a case where there was non-exercise of jurisdiction or mal-exercise of jurisdiction.

It was held in *Shaw Wallace & Co Ltd.* vs. *Govindas Purushothamadas & another,* (2) 2001 SLT 513, that the High Court is entitled to satisfy itself as to the regularity of the proceeding of the correctness, legality of propriety of any decision or order passed therein and if, on examination, it appears to the High Court that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass such orders accordingly.

As we have seen early, the power of revision given under this Act, are wider than under Section 115 Civil Procedure Code. The words 'legality, regularity or proprietory of the order' are wide enough to cover both questions of law and fact and go far beyond the revisional jurisdiction strictly so called.

Under Section 25 the power of the Revisional Court is only a power of superintendance and it should not interfere with the findings of fact of the lower courts just because it does not agree with the same.(Bank of Baroda, represented by its *Chairman* vs *Mahendra Dada and two others*, 1982 (2) MLJ 85 at 93). A revision should not be an engine of oppression but should be means of correcting judicial errors and promoting carriage of justice.

Again it is pointed out in [*Lakshmidas ved* vs. *Parag Mawani* 2000 (2) MLJ 456], that the expression 'revision' conveys a much narrower jurisdiction than the expression 'appeal'. The power conferred under Section 25 is essentially a power of superintendence. The High Court should not interfere with the findings of fact merely because it does not agree with the finding of the subordinate authority.

Let us now consider in what cases, the interference by Revisional Court is not justified. When both the Courts concurrently held that the tenant has committed acts of waste, then the High Court in Revision will not interfere with the concurrent findings unless there is a taint of illegality or miscarriage of justice (*A.W.Dhuruva & Company* vs *P.M.Abdul Rahim* 1986 (1) MLJ 363 at 367). Likewise the concurrent findings of fact about wilful default are not

to be disputed by the High Court under Revisional Jurisdiction. The Supreme Court in [*Lakshmi Narain* vs *Vidyut Cable and Rubber Factory* (1970 SCJ 40 at 42)] held that where there was neglect on the part of the tenant to pay the rent is essentially a question of fact and the High Court in exercising jurisdiction under Section 115 CPC was not competent to go into the question.

In the following cases, it was held that the High Court by its revisional jurisdiction can interfere with the decisions of Appellate Authority (1) where the District Judge exceeded the limits of his jurisdiction, (2) where there was failure of justice by reason of wrong approach (3) where the lower Court refused to exercise its jurisdiction vested in it (4) when the judge decided a matter without reference to the Section of the Act which is applicable or ignoring the existing law in the subject (5) when the Court had acted illegally (6) where the Court misconceived the principles to be applied and (7) where the finding was perverse and not supported by evidence on record.

The revisional power of the High Court under this Section could be invoked at any time and not necessarily after any final order. The High Court cannot while exercising jurisdiction under Article 227 of the Constitution, interfere with the findings of facts recorded by the subordinate Court or Tribunal. Revision Court, while acting under Section 25 should not act as if it was sitting on appeal appreciate evidence, weigh the same and by that process come to a different conclusion and reverse a finding of fact arrived at by the Appellate Court. (*Dorairaju* vs *Palaniappa Gounder* 1967 (2) MLJ 286 at 287) The power of Revisional Court have always been understood to be more restricted than the power of Appellate Court (*Sasivarna Thevar* vs *Ponni* 1951 (1) MLJ 158 at 159. It is certainly lesser power than the power of an Appellate Court.

In a revision petition the time taken for obtaining the certified copies of the Appellate Authority's order must be excluded in calculating the period of limitation under Section 25(2) of the Act. Section 5 of the Limitation Act will not apply to the Revision petition under the Act. But Section 5 of the Limitation Act fully applies to Section 23 of the Act. Section 25 rules out Section 5 of the Limitation Act and expressly Legislates on the very subject which is to be dealt with by Section 5 of the Limitation Act. The Revision Court has no power of remand.

OTHER PROVISIONS, RELATING TO CONTROLLER

In this Chapter let us now consider the power of the Controller in appointing the Commissioner (Section 18 A) the rejection of any application which was

finally decided by him on merits, (Section 19), pronouncement of order in open Court (Section 20) power to convert residential building into non-residential building (Section 21). Controller's discretionary power of ordering cost of proceedings (Section-24) and Controller's power to issue summons (Section 28).

1. APPOINTMENT OF COMMISSIONER :

The appointment of Commissioner is one of the powers of the Controller. Under Section 18A, he can appoint a Commissioner in any proceeding before him. For example in the case of conflicting reports filed by Engineers examined by the landlord and tenant regarding the condition of the building, the Controller can appoint a Commissioner to find out the real existing conditions of the building. It is discretionary power of Controller to appoint a Commissioner, depending upon the various circumstances. If Controller refuses to appoint a Commissioner on application by the landlord, no appeal will lie against his order. He cannot appoint a Commissioner for the purpose of inspecting and submitting a report regarding the determination of fair rent in an application under Section 4 of the Act. Under this Act, the Controller alone has the power to appoint a Commissioner and Appellate Authority or High Court are not empowered to appoint a Commissioner.

2. THE RULE OF *RES JUDICATA* :

Section 19 empowers the Controller to summarily reject any application filed under Section 3A, or Section 12 or Section 10(2), 10(3) and 10 (3A) or under Sections 14,15 or 16, if such application raises between the same parties substantially the same issues and they have been finally decided in a former proceeding. In [*Srinivasan* vs *Arumugham* (94 LW 310 at 312)], the scope and applicability of the Section is broadly explained. Section 19 incorporates the principle of ***Res judicata*** more or less on the same lines as in the Civil Procedure Code. Two important requisites must be present for applying this Section. One is that there must be identity of issues in the two proceedings and the other is that the former proceeding must have been decided on the very issues which arise in the latter proceedings.

The object of this Section is to prevent frivolous applications on the same ground. The words "finally decided " in Section 19 of the Act clearly implies that the prior application should have been decided on merits. Where the application for eviction was withdrawn with the leave to file a fresh application, it cannot be said that the petition is 'finally decided' so as to bar a fresh application for eviction. Where issues under clauses 10(2) (*ii*) (*a*) and (*b*)

(subletting and different user) are not the same but different, the case is not hit by Section 19 or any principle of constructive ***res judicata*** (*Dr. N.R.Rao* vs *Premier Auto Electrical Company* 86 LW 646 at 650)

Any finding given in the previous proceeding with regard to fair rent for the premises would not be ***res judicata*** because the fixation of fair rent cannot remain the same for all the time (*Ethirajulu Naidu* vs *Hajee Abu Baker* 1964 (2) MLJ 98 at 101). Similarly where the disposal of the former proceeding was solely on the issue of notice to quit and ***bona fide*** requirement was not gone into, it was held there was no ***res judicata***. Where the landlord after the dismissal of his prior eviction obtained an order of exemption from the Government from Section 10(4) the finding in the prior proceedings has to be construed ***ab initio void*** and Section 19 is no bar for the filing of another petition for eviction (*Govindarajulu* vs *Jayaraman* 1976 (1) MLJ 406 at 410). Even if one of the issues in a prior application has not been finally decided, it will be open to the petitioner to file a subsequent application on the ground in which there was no final adjudication(*Sivasubramanian Chettiar* vs *Ramasami Iyer* 1955 (2) MLJ 457 at 459).

This doctrine of ***res judicata*** will apply so long as there is no change of circumstances as far as Rent Control Acts are concerned.

3. PRONOUNCEMENT OF JUDGMENT :

Section 20 of the Act speaks of a Rule of Court, namely pronouncing of order in open Court after notice to the parties on the day on which the case finally heard or on some future day.

4. CONVERSION OF BUILDING :

A residential building can be converted into a non- residential building only with the permission of the Controller. Section 21 provides this provision. This Section speaks conversion of residential building into non-residential building only and not ***vice versa***. Section 21 applies only to the cases covering entire building and has no application as to portions of the building. Hence, the landlord under Section 10(3)(c) has freedom to adjust his needs if he is occupying a portion of the building along with his tenant.

5. COSTS :

Section 24 deals with payment of costs. The Controller has discretionary power to order cost in the necessary cases. He will decide the quantum of amount to be paid as costs and give all necessary directions in this regard.

6. SUMMONS TO WITNESSES :

Section 28 of the Act empowers the Controller to issue summons to any person in cases where the examination of such witness is considered essential by the Controller for the proper disposal of the case. The Section applies only to Controller and not to the Appellate Authorities. The Rule 26 of the Tamil Nadu Building (Lease and Rent Control) Rule 1974 elaborately describes the procedure. The summons to witnesses may be sent, directing them to give evidence or to produce documents in their custody.

SUB-TENANTS

Section 26 declares that any order for eviction of tenant shall be binding on all sub-tenants who were made parties in the application. Section 2(8) of the Act does not include a person placed in the occupation of the building by its tenant. As such, the sub-tenant has not been given any protection under the Act and it is not concerned with the relationship between the tenants and sub-tenants.

It is settled law that a decree in ejectment passed against a tenant at the instance of the landlord is not only binding on the tenant but also on his sub-tenant provided they have no right independent of the right of the tenant in the demised premises (*Parthasarathy* vs *Chitapillai* 1967 (1) MLJ 83 at 90). The sub-tenant who is in possession is a tenant only of his lessor and the sub-tenant will have neither a privity of contract nor privity of estate so far as superior lessor (in this case the landlord) is concerned.

The later part of Section 26 makes it clear that the persons who became sub-tenants after the date of the application for eviction shall be bound by the order of eviction whether made parties or not. If the sub-tenants are made parties, the order of eviction would be binding on them on its own force. The Act does not say that a sub-tenant is a necessary party to a proceeding for eviction. The order of eviction is binding on the sub-tenant and he cannot claim any higher rights than the tenant. It is settled law that a decree for possession obtained against a tenant can be straightaway be executed as against the property in the hands of the sub-tenant even though the sub-tenant was not a party to the proceeding in which eviction was passed.(*Ramachandra Sastri* vs *Mohammed Hussein* 1965(2) MLJ 102 at 103).

LEGAL REPRESENTATIVES

Section 27 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 deals with the proceedings by or against legal representatives. In the case of the death of the landlord or tenant, their legal representatives are entitled

to be impleaded as parties to the proceedings and continue the proceedings already initiated.

Rule 25 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 says, that every application for making the legal representative or representatives of a deceased person, party to a proceeding under the Act shall be preferred within one month from the date of death of the person concerned or the date of having knowledge of the death of the person concerned. An application to implead legal representatives of the deceased person filed beyond 30 days is barred by limitation.

This Act does not contain any definition of the term legal representative. However with respect to the 'tenant' under Section 2(8) of the Act, the term tenant includes apart from surviving spouse, son or daughter of the deceased tenant, other category of persons are also contemplated as legal representatives. A person claiming to be a tenant must satisfy two conditions; (1) that he or she is the surviving spouse or any son or daughter or the *legal representative* of the deceased tenant; (2) the above said such person should have been living, with the tenant in the building as a member of the tenants family upto the death of the tenant. In the case of non-residential building he or she should be in continuous association with the tenant and continues to carry on such business thereafter (*M.P.Ramanujammal* vs *C.Parankujam* minor represented by father and guardian (1991), MLJ 116 at 118. So it is clear that all the legal representatives will not be tenants but only such of them as had been in continuous association with the tenant for the purpose of carrying on the business of the tenant.

Section 27 of the Act providing for the continuance of the proceedings under the Act, by or against the legal representatives is general in nature and has application to cases where the cause of action survives even after the death of original party to the proceedings (*Salima Bi* vs *Malika Begum* 1972 (2) MLJ SN 21)

In a petition under Section 14(1)(*b*) the landlady died pending its disposal. It was held that the legal representatives can come on record. (*Rathinam* vs *Syed Beevi* (deceased) *and others* 1989 (1) 279 at 281. Similarly, on the death of the landlord during the pendency of the proceedings the executors under the will of the landlord can represent the landlord and continue the proceedings.

The legal heirs are bound by the undertaking given by the deceased and the claim that it is personal covenant by the landlord is not acceptable (*Rathinam*

vs *Syed Beevi and others* 1989 (1) MLJ 285 at 286). If the law permitted the eviction of the tenant for the requirement of the landlord 'for occupation as a residence for himself and members of his family,' then the requirement was both of the landlord and the members of the family. On his death the right to sue did survive to the members of the family of the deceased landlord (*Shantilal Thakordas* vs.*C.M. Telewala* 1976 (4) SCC 417).

If the original tenant had died before the contractual tenancy had terminated, then the legal representatives would have inherited the tenancy and in that case the rent would become payable by them (*Chatterjee* vs *Sri Kishan* 1972 (2) SCC 461 at 465). Landlord filed an application for eviction on the ground of sub-letting. Eviction was ordered and the landlord filed execution petition. The Chief tenant died. The sub-tenants raised an objection regarding executability of the decree against them, contending that in the absence of legal representatives of the main tenant being brought on record, eviction order cannot be executed. The High Court rejected this contention holding that the provisions of the Act 18 of 1960 though does not contain any definition of the term, legal representative, still the term tenant indicates that apart from surviving spouse, the son or daughter of the deceased tenant, other categories of persons are also contemplated as legal representatives.

This interpretation is not without significance since the word tenant refers not only to heritable relationship but also to inner considerations.

The Latin maxim ***actio personalis moritur cum persona*** has no application in these cases. When the landlord obtained an order of eviction under Section 10 (3) (*a*) (*iii*) such a right cannot be characterised as a personal right which comes to an end with the death of the landlord. It is an incorporal right annexed to the estate of the deceased and it can be taken advantage by the legal representative (*Gafoor* vs *Lakshmanan Mudaliar* 1979 (2) MLJ 124 at 127). Where a landlady after obtaining an order of exemption under Section 29 of the Act on the ground that the premises was required for her married daughter and grandchildren, filed a suit for recovery of possession and died during the suit, it was contended that the exemption granted was personal and the legal representatives could not come on record. Apart from there being nothing to suggest that the exemption was personal to the grantee the operative portion would clearly show that the stress was to house the married daughter and grand-children. It was held that it was not personal to the grantee. (*Champalal Sowcar* vs *Rajaloo* 1976 (1) MLJ 347 at 349)

Section 27 of the Act will not apply to cases where the relief sought for in the eviction petition is personal to the deceased as in a case where eviction is sought on the ground of ***bona fide*** requirement of the premises for his own

occupation (*Salima Bi* vs *Malika Begum* 1972 (2) MLJ SN 21). Where the landlady for whose personal benefit the order of eviction was made is dead, it was held that a decree in favour of the widow (landlady) to reside in the house is personal and would become unenforceable on her death (*Mohammed Ibrahim* vs *Rahiman Khan* 1947 (2) MLJ 419 at 420)

EXEMPTIONS OF BUILDINGS

Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, provides exemption of any building or class of buildings from all or any of the provisions of this Act.

Under this Section, the Government has discretionary powers to grant exemption to any building or class of buildings. The Section does not specifically mention what are the category of building or class of buildings exempted under this section. The Government of Tamil Nadu issued G.O.Ms.No.2000, Home, 16th August 1976 and thereby exempted "all the buildings owned by the Hindu, Christian and Muslim religious public trusts and public charitable trusts from all the provisions of the said Act". This G. O. has been issued by the Government in exercise of the powers conferred by Section 29 of the Act. It further exempts "the buildings owned by all Government undertakings including Government companies registered under the Indian Companies Act, 1956 (Central Act of 1956) and by all the Co-operative Societies from all the provisions of the said Act."

The Section is applicable not merely to institutions like hospitals or schools but may be applied to other cases also where there is no question of any unreasonable eviction of the tenant or where the prevention of eviction itself may be unreasonable(*Irani* vs *State of Madras* 1962 (1 MLJ SC 92 at 104). It is clear from this that the exemption, is given under this Section not only to religious and charitable institution but also to private individuals in proper and right cases. However such a grant should not be discriminatory so as to offend Article 14 of the Constitution, and it must be on the grounds which are relevant to the policy and purpose of the Act and not otherwise ***malafide***. In such cases it is desirable that the grounds on which exemption was granted appear ***ex facie*** in the order of the Government [*Mrs.Andrews* vs *Abirami Ammal* 1962 (1) MLJ SN (6)].

THE SCOPE AND OBJECT OF EXEMPTION

The Section is an enabling provision intended to meet a contingency when the remedy provided by the Act would be insufficient or inadequate in regard to a particular case. The scope and objects are well explained in the following

cases. *Irani* vs *State of Madras* 1962 (1) MLJ SC 92 at 98), *Globe Theatres* vs *State of Madras* 1954 (2) MLJ 110 at 121), *Mrs. Andrews* vs *Abirami Ammal* 1962 (1) MLJ SN 16) and *Gani and Sons* vs *State of Madras* 1956 (1) MLJ SN 4. The Act of the Government in exempting the building from the operation of the Act is not a judicial act (*Dr. Nambiar* vs *State of Madras*- 1953 (1) MLJ 49). It is purely executive in character Section 29 has not empowered the Government to pass any G.O. giving any retrospective effect.

The object of the Section 29 is well explained in [*Muthusamy Naidu* vs. *State of Tamilnadu* 1977 (1) MLJ 204)] as follows: "It is clear that where a statutory provision could either cause great hardship to a landlord or the subject of abuse by the tenant himself, the State Government has power to exempt such hard cases under Section 29." The remedy of exemption under Section 29 of the Act is not a substitute for remedies available to a landlord for eviction under the Act itself. On the other hand, if the remedy under the Act is not available to him, there will be a justification for according exemption under Section 29 of the Act if a case therefor is made out. (*P.C.Cherian, President Vidyaniketan Academic Cum Arts School* vs *The Special Commissioner and Secretary to Government, Home and twelve others* 1991 (1) LW 202 (DB) at 203). The powers cannot be invoked to nullify the orders of the regular tribunals under the Act merely because the Government feels that they were wrong. Or, the Government cannot exempt a building on the very same reason on which the Appellate Authority had rejected the petition when the Tribunals had given a finding, the Government should not sit in judgment and grant exemption (*Kandasamy Chettiar* vs *Government of Tamil Nadu* 1974 TNLJ 339 at 342). If a landlord had a remedy under the Act, it could not invoke the powers under Section 29. (*Devassy* vs *State of Madras* 1970 (1) MLJ 533).

Since the power is special one, it should be used sparingly and with discretion by the State Government. [*Mrs Andrews* vs *Abirami Ammal* 1962 (1) MLJ SN 16]. It is the duty of the Government to take into consideration all the relevant circumstances of a particular case or class of cases in order to determine if the protection of the Act given to the tenant or tenants concerned should be withdrawn [*Irani* vs *State of Madras* 1962 (1) MLJ SC 92 at 98].

It should not be forgotten that the provisions by Rent Control Act place drastic restrictions on the fundamental right of the citizen to hold and enjoy his property. But these restrictions have been constitutionally upheld on the ground of public interest. When a citizen is sought to be deprived of his right

to occupy his own building, all considerations relevant for the purpose, including the question whether the requirement of the owner of the building to occupy himself is genuine or ***bona fide*** should be taken into account.

Individual case of exemption under the Section could be subject of judicial review under Article 226 of the Constitution of India [*Mrs. Andrews* vs *Abirami Ammal* 1962 (1) MLJ SN 16]. So in these circumstances the Court will find out whether (*a*) it was discriminatory so as to offend Article 14 of the Constitution ; and (*b*) the order was made on the grounds which were germane or relevant to the policy and purpose of the Act and ; (*c*) it was not otherwise ***malafide***.

Section 29 provides exemptions to the landlord from the provisions of this Act. The result of an exemption in any particular case is that the landlord is allowed to enjoy his rights without the restrictions imposed by the Act *i.e.*, he is permitted to be governed by the ordinary law of the land.

What is exempted is either building or class of buildings. There is no reference to any category of landlords who could be brought within the Section. It is therefore clear that all buildings owned by the public Trusts and public Charitable Trusts of religious denominations mentioned in the G. O. come within the exemption. The exemption attaches to the buildings for a charitable society to be public, it is not necessary that its objects should encompass the universe or all mankind. It is enough that it refers to a section of the public as a determinate class of the society.

Public Religious Trust includes Temples, by its very definition implies dedication for benefit of public and endowment also presupposes dedication. The Rent Control Act will not apply to Temples in view of exemption granted to Public Religious Trusts. [*Vittal Vel Press* vs. *Sri Rangaswamy Temple rep by its Executive Officer* 2001 (1) CTC 475]

Now let us consider instances of granting exemption under this Section. In one case the building was under the Government tenancy and the only recourse was to seek relief under Section 29. The exemption was granted. In another case, the rent of the Trust property was too low and the trust was in need of augmenting its resources for carrying out its objects;. The exemption was given in this case. In another case the Government granted exemption with the ***bona fide*** intention of protecting the interest of the landlord who had no other house to live in (*K.G.Nambiar* vs *State of Madras* 1953(1) MLJ49).

In another case the middleman took the property on lease and let it out for enhanced profits. The exemption was granted in this case.

EXEMPTION OF NEW BUILDINGS ETC.

Further exemption is given under Section 30 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The following are exempted under this Section :—

(*i*) Any new building for a period of 5 years from the date of construction.

(*ii*) Any residential building or part thereof occupied by any one tenant if the monthly rent paid by him exceeds Rs.400

(*iii*) Any lease of a building under which the object of the tenant is to run the business or industry with the fixtures, machinery, furniture or other articles belonging to landlord and situated in such building.

The sub-clause (1) of Section 30 postpones the application and the enforcement of the Act to the newly constructed buildings for a period of 5 years. Only after the lapse of 5 years this Act would apply. The Section implies that the construction must have been completed after the date of commencement of the Act and that the construction must be Notified to the local authority concerned.

The sub-clause (ii) of Section 30 exempts a residential building whose rental value exceeds Rs.400. With respect to non-residential building no exemption has been given. The Supreme Court in [*Rattan Arya* vs *State of Tamil Nadu* (1986 (11) MLJ 20 SC] has struck down Section 30 (*ii*) as unconstitutional by observing "By one stroke Section 30 (*ii*) denies the benefits conferred generally on all tenants to tenants of residential buildings getting a rent in excess of rupees four hundred per month". Where the premises let out was both for residential and non-residential purposes for a rent above four hundred , it was held that exemption claimed in Section 30 (*ii*),will not be attracted. It will apply only to residential building. (*Tikkamchand Jain* vs *Narasimhachari* 93 LW 599 at 602).

The sub-section (*iii*) of Section 30 deals with composite lease. It is a composite of building as well as business assets. There are three illustration given under this sub-section.

Illustration (1) : Where a dal mill as such is the subject matter of lease and where the intention of the tenant is to run the business with the machinery

in the building in which such dal mill is housed, the Act does not apply to such buildings.

Illustration (2) : Where lease of land and building together with fixtures, fittings, cinematograph talkie equipments, machinery and other articles, the Act does not apply to such building.

Illustration (3) : Where a hotel building together with the furniture, machinery and other articles necessary for the running of hotel business is leased and the tenant is to run the hotel business in such building, the Act does not apply to such building.

Section 30 (*iii*) does not say that the lease must be of a business or industrial undertaking as a going concern. Nor does it require that the composite lease must be such as that the business or industry leased along with the building must be in a ready and running condition on the date of lease (*Bombay Burmah Trading Corporation* vs *Narayanasamy Pillai* 94 LW 334 at 377). A lease of a building cum industrial or business equipment in "as is or where is" condition might still qualify for exemption, even though the equipment will need something more to operate. The lease of a rice mill consisting of the premises and the rice milling machinery belonging to the landlord and erected in the building is exempted from the provisions of the Act (*P.N. Venkatesa Chettiar* vs *Annamalai Industrial Corporation* 1984 (2) MLJ 92 at 97).

CHAPTER XI

THE LAND ACQUISITION ACT, 1894

This Central Act namely the Land Acquisition Act, was passed in the year 1894 to amend the law for the acquisition of land for public purposes and for Companies. It provides elaborate provisions relating to the acquisition of land needed for public purposes and for determining or assessing the amount of compensation to be paid for such acquisition.

The Land Acquisition Act, 1894, is general enactment, extends to the whole of India except the State of Jammu and Kashmir. It came into force on the Ist day of March, 1894.

THE SCOPE AND OBJECT OF THE ACT

The scope and object of the Act is to provide a speedy method of deciding the amount of compensation payable by the Collector when such amount is disputed and the person or persons to whom it is payable. It aims at promoting important public and private interests. The Act does not contemplate or provide for the acquisition of any interest in land which already belongs to Government only for the acquisition of such interests in the land as do not already belong to Government. The Land Acquisition Act deals with the acquisition of land for public purposes and covers lands and buildings situated in any part of the Country.

The Preamble of the Act declares the object of the Act in clear terms. It is for the acquisition of land needed for public purposes and for Companies and

for determining the amount of compensation to be made on account of such acquisition. The purposes of the Act are (*i*) the acquisition of land for public purposes and for companies and (*ii*) determination of the amount of compensation. Under this Act, land may be acquired for public purposes as also for Companies. The purposes for which acquisition of land for Companies may be made are, however, restricted and they have been specified in Section 40(1) of the Act.

The acquisition for a Company contemplated by Part VII is confined only to cases where the Government is satisfied that the purposes of obtaining land is, erection of dwelling houses for workman employed by the Company or for the provision of amenities directly connected therewith or for the construction of some work which is likely to prove directly useful to the public.

The broader object is explained in the Bill introduced in the Lok Sabha in 1982. See *Gazette of India* 9th August, 1984 (Pt.II S2 p11) with the enormous expansion of the State's role in promoting public welfare and economic development since Independence, acquisition of land for public purposes, industrialisation, building of institutions etc. has become far more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again, the acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the Community.

This enactment has been passed with the object of serving the interests of the community in harmony with the rights of the individual. It is evident that where land is acquired for a public purpose, the 'individual good' must make way to 'public good'. The Land Acquisition Act provides for payment of compensation for deprivation of private property by authority of law thereby fulfills the Constitutional obligation of the State under Article 300A of the Constitution hence it would not be violative of Article 14 of the Constitution (AIR 1994 All 38)

Several amendments have been made by the Central and State Governments. Significant changes have been introduced by the Land Acquisition (Amendment) Act, 1984 (Central Act 68 of 1984) and Land Acquisition (Tamil Nadu Amendment) Act, 1996 (Tamil Nadu Act 16 of 1997). The

amendments made by these Acts are wider in range covering various aspects with a desire to streamline the land acquisition procedure.

THE DEFINITIONS UNDER THE ACT

The Act defines various terms like 'land', 'person interested', 'public purpose' etc. In order to enable to understand the provisions clearly it becomes necessary for us to consider some of the important definitions here.

LAND

The term 'land' is defined under Section 3(*a*). This definition is an inclusive and not an exhaustive definition. According to Section 3(*a*), the land "includes benefits to arise out of land and, things attached to the earth or permanently fastened to anything attached to the earth". The definition is same under the General Clauses Act, 1897. This definition however is wider than that of immovable property under theTransfer of Property Act. The expression 'attached to the earth's defined under Section 3 of the Transfer of Property Act, as follows :

(*a*) rooted in the earth, as in the case of trees and shrubs ;

(*b*) embedded in the earth, as in the case of walls or buildings ; or

(*c*) attached to what is so embedded for the permanent beneficial enjoyment of that to which is attached.

Benefits to arise out of land are immovables such as rent from house, revenue from agriculture, right to ferry, right to collect lac from trees, interests of a mortgagee in immovable property etc. The term 'land' in the Act includes soil, buildings any charges in the land or other interests in it. The definition includes, as we have seen earlier, things attached to earth. So the claimant would be entitled to compensation in respect of land. It also includes superstructure if any on it. The land owner whose land is acquired would be entitled to get solatium on the value of the land as well as of the well and any permanent structure raised on the well inclusive of water channels, farm houses, and platform etc. [*Kamala Devi* vs *Border Security Forces, Jalendar & others* (AIR 1988 Raj 205)].

PERSON INTERESTED

The expression 'person interested' is defined under Section 3(b) of the Act. This expression occurs in various Sections, say Sections 9(3), 11,12,18, 20(*b*), 21 and 49. According to this inclusive definition, the expression 'person

interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act, and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

'Person interested' is not necessarily be owner of property alone but all those who could legitimately claim to have some interest in land sought to be acquired will be eligible to raise objection not only in respect of compensation but even in respect of validity of Notification under Section 4(1). The expression 'person interested' has a wider meaning. It also includes a person who though not having any interest in such property but has an interest to claim compensation, for the purpose of compensation proceeding. It includes apart from land owners every mortgagee, a tenant, a lessee, a person having an easement over the land and host of others would come within the phraseology of the language employed in Section 9(3) of the Act. The definition is not exhaustive, as we have seen earlier. What is really meant is that it includes any person claiming interest in the amount of compensation whether it be a valid claim or not. The Collector is bound to treat every person who claims compensation as an interested person. He should include him in the award under Section 11 even though he may award him nothing. [*The State of Bihar* vs *Dr.G.H. Grant and another*(AIR 1959 Pat 343 at 345)]. It is immaterial whether there is any substance in the claim made by the person applying under Section 18.

It includes even a tenant or a holder of easementary right etc. on facts that name of the real owner was shown in Notification, held to be 'person interested' and he is entitled to object acquisition proceedings [*Lakshmanan* vs. *Government of Tamil Nadu and another* 2000 (1) CTC 382 DB].

The following have been held to be 'person interested'. (1) owner of the land, (2) person who has entered into a valid agreement for the purchase of land, (3) person interested in easement affecting land acquired, (4) tenant in possession on the date of preliminary Notification, (5) sub tenant, (6) Receiver appointed by the Court, (7) Reversioner, etc.

COMPANY

Under the Land Acquisition Act, 1894, land may be acquired for a public purpose as also for companies. The term 'company' is defined under Section 3(e) of the Act. The term 'company' means :

(*i*) a ***Company*** defined in Section 3 of the Companies Act,1956 other than a Government Company referred to in clause (*cc*) ;

(*ii*) a ***society*** registered under the Societies Registration Act, 1860 or under any corresponding law for the time being in force in a State, other than a society referred to in clause (*cc*) ;

(*iii*) a ***co-operative society*** within the meaning of any law relating to Co-operative societies for the time being in force in any State, other than a Co-operative society referred to in clause (*cc*).

Food Corporation of India, State Transport Corporation are held to be within the definition. However ONGC, Municipal Corporation and Khadi Gram Udyog Board are held to be outside the definition.

PUBLIC PURPOSE

The object of this enactment is acquisition of land for ***public purpose*** and for Companies. The expression 'public purpose' is defined under Section 3(*f*) of the Act. This definition is inclusive definition and used in wider sense. It has to be interpreted reasonably, purposefully and pragmatically. According to this definition following are regarded as public purpose. The provision of :

(*i*) village sites or the extensions planned development or improvement of existing village sites,

(*ii*) land for Town or rural planning,

(*iii*) land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal by the Government with the object of securing further development as planned,

(*iv*) land for a Corporation owned or controlled by the State,

(*v*) land for residential purposes to the poor or landless etc,

(*vi*) land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any other authority, established by Government for carrying out any such scheme,

(*vii*) land for any other scheme of developments sponsored by Government,

(*viii*) any premises of building for locating a public office.

But it does not include acquisition of land for Companies.

The expression 'public purpose' is not capable of precise and comprehensive definition which may be of universal application. The concept of public purpose is not static. It changes in accordance with the requirements of society from time to time and in accordance with the conditions in the Country. Broadly speaking its object is to promote public health and general welfare - (AIR 1959 Punjab 538 at 542).

Ordinarily the Government is the best authority to determine whether the purpose in question is a public purpose or not. Thus, a Housing Scheme for a section of public may be a public purpose. *(Ratilal Shankarabhai & others* vs. *State of Gujarat* AIR 1970 SC 984 at 986).

There are number of cases in which the Court have decided whether the acquisition made is for public purpose or not. The acquisition of land for rehabilitation of landless agricultural labourers of Scheduled Castes/Tribes and village artisan is held to be for pubic purpose. The acquisition of 'fishery' for purposes of reclamation for rehabilitating displaced fisherman is regarded as pubic purpose. The acquisition for establishing an institute of technology to give technical education held to be for public purpose. [*Arnold Rodricks and another Lawrence Zureb John* vs *State of Maharashtra* (AIR 1965 SC 1788 at 1797)].

To constitute public purpose it is not necessary that land when taken should be made available to the public at large, but it is enough if it is in general interest of community as opposed to individual interest. Acquisition for establishment of University and construction of quarters for members of staff of the University constitute a public purpose. If the acquisition benefits a private person alone or only individuals, it is not a public purpose. But if it furthers the general interest of community, though incidently it benefits individuals, it does not cease to be a public purpose [*Bhagat Dayal & others* vs *Union of India and others* (AIR 1959 Punjab 544 at 548]. Likewise acquisition of land for the purpose of building a public library or traveller's bungalow or hospital for ESI Corporation are held as public purpose.

If by a Statute the Legislature declares certain purpose as a public purpose, the Court of law should accept it as such, unless it is found impossible to do so or unless it involves violation of Constitutional guarantee under Article 31 of the Constitution. [*Bhagat Dayal & others* vs *Union of India and others* (AIR 1959 Punjab 544 at 549)].

ACQUISITION

Part II of the Land Acquisition Act, 1894 deals with preliminary investigation, objections and taking possession of the land. - Sections 4 to 17.

Section 4 of the Act is an important Section which deals with publication of preliminary Notification, public notice of the substance of Notification and powers of the officers. Section 4 provides the initial stage of the procedure which is to be followed in land acquisition proceedings. Thus the first stage is the issue of Notification under Section 4 stating that land is likely to be needed for public purpose. (AIR 1970 Delhi 105 at 107)

Section 4(1) says, subject to the provisions of sub-section 1(A), whenever it appears to the Collector or the Commissioner of Land Administration or the Government as the case may be that land in any locality is needed or is likely to be needed for any public purpose or for a Company, a Notification to that effect shall be published in the *Official Gazette* and in two daily news papers circulating in that locality of which atleast one shall be in the regional language and the Collector shall cause public notice of the substance of such Notification to be given at convenient places in the said locality, the last of the dates of such publication and giving of such public notice, being hereinafter referred to as the date of the publication of the Notification".

The Section was amended by the Government of Tamil Nadu in the year 1997. It introduced certain changes in sub-section 1, and added Explanation clause and sub-section 1(A).

According to the explanation clause, the publication of Notification in the ***Official Gazette***, the publication of such Notification in two daily newspapers and the giving of public notice (*a*) may precede each other (*b*) shall be completed within a period of sixty days.

Again according to Tamil Nadu Amendment made in 1997, the Notification shall be published by :

(*a*) the Collector in respect of land not exceeding ten acres in extent the value of which does not exceed rupees five lakhs ;

(*b*) the Commissioner of Land Administration in respect of land not exceeding twenty acres in extent the value of which exceeds rupees five lakhs, but does not exceed rupees twenty lakhs ;

(*c*) the Government in other cases.

After reading sub-section 4(1) and 4(1A) we may sum up the important aspects of this Section as follows :—

1. A Notification in the *Official Gazette* and in two daily newspapers shall be published by the Collector or the Commissioner of Land Administration or the Government as the case may be.

2. It should be to the effect that land in any locality is needed or likely to be needed for any public purpose or for Company.

3. The acquisition of land must be for a public purpose.

4. The Section enables the Government to acquire land for a Company also. The purposes for which acquisition of land for Companies may be made are however, restricted and have been specified in Section 40(1) of the Act.

5. Section 4 requires a Notification to be published in the *Official Gazette* and the Collector to cause notice of the substance of such Notifications to be given at convenient places in the locality. The Notification which should be published and *Official Gazette*, a public notice which should be caused to be given in the locality are two distinct acts.

6. The publication must be made apart from the *Official Gazette*, in daily newspapers circulating in that locality of which at least one shall be in the regional language.

7. Further the public notice of the substance of the Notification to be given at convenient places in the locality. The service of a copy of preliminary Notification on that owner of land sought to be acquired is not mandatory.

8 Notification under Section 4(1) must specify particulars of land including extent proposed to be acquired.

9. Even in case of urgency in acquiring land, issuance of Notification is condition precedent.

10. The date of publication of Notification under Section 4 is the last date of various Notifications under the Section.

11. With respect to publication of Notification and public notice, The Tamil Nadu Amendment says, they may precede each other.

12. The publication of Notification in the *Official Gazette*, the publication of such Notification in two daily newspapers and the giving of

public notice should be completed within a period of sixty days as per 1997 Tamil Nadu Amendment.

13. With regard to the question who is to issue the publication of Notification, Tamil Nadu Act 16 of 1997, says it must be by —

(*a*) the Collector in respect of land exceeding 10 acres in extent the value of which does not exceed Rs.5 lakhs

(*b*) the Commissioner of Land Administration in respect of land not exceeding 20 acres in extent the value of which exceeds Rs.5 lakhs but does not exceed Rs.20 lakhs ; and

(*c*) the Government in other cases

Now let us discuss the above requirements in detail.

PUBLICATION OF NOTIFICATION

The Notification under Section 4 is the starting point of the acquisition (AIR 1957 Cal 495 at 499). The purpose of Notification under Section 4(1) is to give a notice of warning to all persons interested in the land Notified that at the same or part of it may be ultimately acquired by issuing a declaration in that behalf under Section 6. It is given for two purposes : (1) that persons interested in the land may if they so desire file objections against the acquisition of the land Notified or of any land in the locality and (2) to fix the date with reference to which ultimately compensation is to be paid for the land acquired. The issue of Notification also empowers doing of various acts mentioned under sub section (2) of Section 4. [*Bahorilal* vs *Land Acquisition Officer and others* (AIR 1970 All 414)]. Section 4(1) Notification is preliminary in nature and administrative in character.

The Notification published under Section 4 should set out sufficient information giving the notice to the owners of land that their properties are intended to be compulsorily acquired. Otherwise not only the Notification but all subsequent proceedings founded on it become invalid, because publication of valid Notification is *sine quo non* to the exercise of further powers under the Act.

In [*Miss Asiya Mariyam* vs. *The Secretary to Government of Tamil Nadu* 2000 (*iv*) CTC 125], it was held that the mis-description of owner in the Notification regarding acquisition proceedings it would show that proceedings suffer from total non-application of mind, hence land acquisition proceedings is invalid. In this case it was further held that in the absence of notice to legal heirs of deceased pattadar the acquisition of land is invalid.

If the Notification does not state the exact purpose for which the land is acquired it is defective and is liable to be quashed. When Notification regarding the purpose of acquisition of land found to be vague same would be liable to be quashed [*Somasekar and another* vs. *The State of Tamil Nadu* 2000 (1) MLJ 459]. Where Notification set out purpose of acquisition as planned industrial development of the district, the details of industries to be set up on the land need not be mentioned in the Notification [*Rajbali & others* vs *State of Uttar Pradesh* (AIR 1983 All 78)]. The Notification of a public purpose which would enable the interested persons to lodge the objections effectively under Section 5A is the core of Section 4. If that requirement of Section 4 is not satisfied, Notification issued under Section 4 must be held to be void. [*Patel Shankarbhai Mahijibhai* vs *State of Gujarat* (AIR 1981 Guj 67 at 70)]. Section 4 Notification stating that the land was required for housing Cooperative Society would be valid even if name of society was not stated (ILR 1986 (2) Allahabad 694 at 695).

Section 4 requires the doing of two things namely, (*a*) the publication of a Notification in the *Official Gazette* by the Government that land may in any locality is needed or likely to be needed for any public purpose and (*b*) public notice of the substance of such Notification by the Collector at convenient places in the locality. Both these requirements are mandatory and non-compliance therewith is fatal to the entire acquisition proceedings. (1969 71 Punjab LR 345).

It is pointed out in [*Ramaiah Moopanar* vs. *State of Tamil Nadu* 2000 (1) CTC 117] that wherein paper publication published in two Tamil dailies are not circulated either in locality or where petitioner resides or where property located. Hence such publication amounts to non-compliance of the mandatory provisions of Section 4(1) of the Act. Again in [*Chelladurai* vs. *Government of Tamil Nadu* 2000 (iii) CTC 215] it was pointed that all the three modes of publications are mandatory i.e. *Gazette* publication, publication in two news papers and publication of Notification at convenient places in locality.

The Government has power to withdraw from acquisition at any stage. The scheme of the Act leaves no manner of doubt that till the time of taking possession the Government is free to withdraw from acquisition at any stage whether it be the publication of a Notification either under Section 4 or Section 6 or even when the award is to be made. [ILR 1974 (2) Delhi 113 (117)]. Government order withdrawing the land from acquisition required its publication in *Official Gazette* [1992 SCD 568 (579)].

Where the Collector fails to cause public notice of substance of Notification to be given at convenient places in locality where land sought to be acquired is situated, the whole acquisition proceedings are vitiated [*Marinderji Singh* vs *Ranjit Singh and others* vs *State of Uttar Pradesh and others*] [AIR 1973 SC 552(553)]. Even in case of urgency in acquiring land issuance of Notification is condition precedent.

Sections 4(1), 5A and 6(1) do not require service of the Notification under Section 4(1) and any notice personally on the person interested in the land acquired for holding an enquiry under Section 5A and the making of declaration that the land is needed for public purpose. [*Ghousia Begum* vs *The Union Territory of Pondicherry*] [AIR 1975 Mad 345 (352)].

PUBLIC PURPOSE

The Government may acquire land in any locality for any purpose or for a Company. The expression is defined under Section 3(*f*) of the Act. The scope of expression public purpose is not static and must change with varying concept, time, state of society and its needs. Therefore the proper approach is to consider the scheme of acquisition as a whole and then examine whether the entire scheme of acquisition is for public purpose or not. The question will have to be decided in each case on the touchstone as to whether the acquisition is in the interest of the community or section of society as distinguished from private interest of an individual [*Jamidhad Devibhai Bhat* vs *The Commissioner of Nagpur*] [AIR 1976 Bom 129(138)].

Ordinarily the Government is the best authority to determine whether the purpose in question is public purpose or not. In finding out whether the purpose is really a public purpose the Court has to apply two tests. Firstly whether the purpose benefits the community at large or a section there of and secondly whether the Government is satisfied about the need of the land acquisition for the declared purposes. The public purpose need not be expressly stated in the Notification or declaration but if the purpose be challenged before the Court of Law, as not a public purpose, the same has to be established by evidence aliunde [*Ganjodhen Ghosh* vs *State of West Bengal*] (AIR 1963 Cal 565 at 572).

A public purpose would generally mean acquisition of land for a purpose which would go to the benefit of the general public or for the purpose of establishing some institution which might be utilised by the public for certain benefit. For a valid Notification under Section 4, it should have appeared to the Local Government that the land in question was needed or likely to be needed for a public purpose. It is the Local Government which has to be

satisfied as to the existence of such purpose. We have seen early the Government are the sole judges to decide the question whether it is necessary for public purpose.

Following are held to be for public purposes. (1) construction of factories for handloom complex (2) to provide amenities and conveniences to pilgrims visiting renowned Devasthanam (3) acquisition of land for providing house sites to landless labourers in rural areas (4) provision for house sites for Harijans (5) for building a library (6) construction of temple (7) for establishing biological park in a forest (8) accommodation for Government Servants. (9) a play ground and a hostel for educational institution and (10) establishing an industrial area by a Corporation etc.

Section 6 speaks about declaration of intended acquisition. The distinction between Section 4 and Section 6 is that what is mere proposal under Section 4 becomes subject matter of definite proceeding for acquisition.

THE POWERS OF THE OFFICERS

Section 4 sub section 2 is an enabling section. It empowers the officers to have right of entry with the land for doing necessary preliminary works. They have the right of entry only subsequent to Notification. The powers of the officers are :

1. to enter upon and survey and take levels of any land in such locality ;
2. to dig or bore into the sub soil ;
3. to do all other acts necessary to ascertain whether the land is adapted for such purpose ;
4. to set out the boundaries of the land proposed to be taken and the intended line of work (if any) proposed to be made therein ;
5. to mark such levels, boundaries and line by placing marks and cutting trenches ; and
6. where otherwise the survey cannot be completed and levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle.

The proviso clause imposes a condition on such officers while entering the land. He should not enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in visiting of his intention to do so.

HEARING OF OBJECTIONS

Section 5A of The Land Acquisition Act, 1894, speaks about the right of a person having interest in land to raise objections and an opportunity of being heard. It also deals with Collector's inquiry in the matter and his report with respect of land to Government containing his recommendation on the objections.

According to Section 5A, any person interested in any land which has been Notified under Section 4(1) may object the acquisition of land within 30 days from the date of publication of the Notification. For this purpose he has to file the objection in writing before the Collector. Then the Collector will give the object or an opportunity of being heard. Afterwards the Collector after hearing all such objections and after making further inquiry, will send his report to the Government or the Commissioner of Land Administration containing his recommendations on the objections together with record of proceedings held by him for the decision of the Government or the Commissioner of Land Administration as the case may be. The decision of the Government or the Commissioner of Land Administration as the case may be will be final.

The very purpose of Section 5A inquiry is to let the authorities know that the acquisition is not proper for various reasons and the acquisition authority must consider all these objections and quite often than not in some cases they might even give up the idea having been convinced with the objections raised by the person interested or in some cases they might restrict the acquisition of the area to a limited extent and so forth and it is there after the declaration of intended acquisition under Section 6 might be made. The object of the legislature in enacting this Section is that no final order directing acquisiton should be made by Government without giving the owner of the land proposed to be acquired or person interested in it an opportunity to pùt forward their objections to the proposed acquisition and without the Government considering those objections (AIR 1959 Ker 343 (345). Section 5A which is mandatory is not merely an empty formality.

This Section does not apply when action under Section 17(4) is taken. Section 17 deals with special powers of Government in cases of urgency.

WHO CAN OBJECT ?

With regard to the question that who can raise objection to the acquisition of land, Section 5A clearly says that any person interested in any land which has been Notified under Section 4(1) of the Act can raise the objection. The

expression "person interested" is defined under Section 3(*b*) of the Act. Further Section 5A sub-clause (3) says "for the purpose of this Section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation, if the land were acquired under this Act". That is, a person is deemed to be interested in the land if he would be entitled to claim compensation if the land is acquired under the Act. [*Sri Kanya Parameswari Devasthana and Charities* vs *Srila Sri Ambalavana Pandava Sannathi*(AIR 1981 Mad 42(44)] So it is evident that only a person interested can object to acquisition proceedings. A person who has no claim in compensation likely to be awarded as a result of the acquisition proceeding cannot obviously challenge the proceedings.

In the light of provisions of Section 5A and also definition under Section 3(*b*) the 'person interested' is not necessarily be the owner, but all those who would ultimately claim to have some interest in the land which is sought to be acquired and will be eligible to raise objections not only with regard to compensation but even with regard to the validity of Notification under Section 4(1). He can be a tenant or donee and so forth. A licensee who had been occupying the land having constructed permanent structure is a person interested in compensation. A purchaser of land after the stage of objections under Section 5A, was over, can question the compensation amount but cannot demand inquiry under Section 5A.

RAISING OF OBJECTION AND HEARING OF OBJECTIONS

The objector can object to the acquisition proceedings within 30 days. The 30 days limitation for filing the objection under Section 5A is to be computed not from the date of the Notification under Section 4, but from the date of its publication in the *Government Gazette* (AIR 1964 Punjab 32 (33). Under this Section Collector is not obliged to consider time bound limitation. Though Section 5A of the Act deals with objection to acquisition of land by any person interested in land, wherein the objections filed beyond thirty days of time limit the appellant would not be entitled to hearing under Rule 3(*b*) of Tamil Nadu Land Acquisition Rules [*Velusamy and another* vs. *Government of Tamil Nadu and another* 2000 (2) MLJ 48]. But once Collector decides to condone delay and considers objections, he must give hearing to objector which is mandatory.

The heart of Section 5A is the hearing of objections and under sub-section (2) a personal hearing is mandatory. Where the Collector for Land Acquisition proceedings invites objections and hears parties those objections and then makes a local inspection in their presence, Section 5A is fully complied

with. In this connection we must remember that the power to hear the objection under Section 5A is that of the Collector and not of the appropriate Government.

Under Section 5A, it is sufficient, if the objector is given a personal hearing or his pleader is heard and the objections are considered before making the Statutory report. The inquiry under Section 5A is not a judicial or quasi judicial inquiry but only an administrative inquiry (ILR 1972 Guj 336 DB). The principles of natural justice is to be followed in such inquiries.

The Collector hearing objections has no authority to accept or reject objections. He can only hear objections and hold enquiry and submit report to Government with his recommendation. The recommendations of objections need not be in form of agreement or disagreement with objections to Notification. It may be a suggestion to Government that objections raise certain issues which may be examined. The Government also can take decision. Its decision is final. The Collector's report is only recommendation and not binding on Government. The decision once taken under Section 5A, cannot be cancelled or altered. After a decision has been taken by the State Government on the objections in favour of the objector, it is no longer possible to make a declaration to the contrary under Section 6, because that would amount to abide the decision under Section 5A which makes final.

DECLARATION OF INTENDED ACQUISITION

Section 6 of the Land Acquisition Act, 1894, deals with declaration issued by the Government that land is required for a public purpose. Section 6 consists of 3 sub sections. Section 6(1) deals with the declarations made by the appropriate Government. There are two provisos to this Section. Explanation I speaks about computation of period and explanation is about awarding of compensation. Section 6(2) deals with publication of such declaration. The explanation under this sub section was added by the Tamil Nadu Act 16 of 1997. Section 6(3) speaks about the effect of such declaration.

Subject to the provisions of part VII of this Act, where the appropriate Government or the Commissioner of Land Administration as the case may be, is satisfied, after considering the report if any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some Officer authorised to certify its orders or under the signature of the Commissioner of Land Administration as the case may be.

Where Section 5A has not been complied with, in that no opportunity is given to the objector to be heard, the declaration made under Section 6 is without jurisdiction. The compliance of Section 5A is a condition precedent to a valid declaration. For this purpose the Government should have 'satisfied' after considering the report under Section 5A, that any particular land is needed for a public purpose or for a Company. There can be no declaration under Section 6(1) without a previous publication of a Notification under Section 4(1).

Making of declaration now serves three fold purposes under the scheme of the Act. (*i*) It furnishes conclusive evidence that land is needed for public purpose (*ii*) it is only, after making such declaration that appropriate Government may acquire land, in the manner provided therein and (*iii*) it furnishes starting point for limitation within which an award of compensation is to be made (AIR 1993 Raj 157 (167).

Articles 19(1) (*f*) and 19(5) of the Constitution of India have no application to the case of acquisition of property under the Land Acquisition Act and the test of Constitutional validity in such a case is Article 31. Even assuming that Article 19 (*f*) applies, restriction imposed by Sections 4 and 6 are reasonable restrictions within the meaning of Article 19(5) and the provisions of Sections 4 and 6 do not violate the guarantee given by Article 19(1)(*f*) (*Beri Madhas Chatterji* vs *State of Bihar and another* AIR 1958 Pat 183 DB). Since the Land Acquisition Act provides that the declaration made by the State that a particular land is needed for a public purpose shall be conclusive evidence of the fact that is so needed, the Constitution is not thereby infringed. The Act being a pre - Constitution law, is protected from the operation of Article 31 (2) by the provisions of Article 31(5)(*a*) and Article 19(1)(*f*) is not attracted to such a case and other. (AIR 1963 SC 151(160).

It has been held in a number of cases that sub-sections (1) and (3) of Section 6 are not un-constitutional. The Act read as a whole makes it clear by implication that all acquisitions thereunder must be for a public purpose. Secondly, the Act is an 'existing law' as defined in Article 366 (10) of the Constitution. By virtue in Article 31(5) no law which is an 'existing law' can be questioned on the ground that it is in conflict with Article 31(2). It is a law which was made by a competent Legislature before the Constitution, and it did not become invalid immediately on the Constitution coming into force. The Act is covered by a saving clause, clause(5)(a) of Article 31, being an existing law other than a law to which the provision of clause 6 apply and is valid (*R.L. Arora* vs *State of Uttar Pradesh*) (AIR 1958 All 872 DB).

PUBLIC PURPOSE

The expression public purpose is defined under Section 3(f) of the Act, and is not capable of precise and comprehensive one. The purposes are mentioned under Section 3(*f*). The concept of public purpose is not static. It changes in accordance with the conditions of the society from time to time and in accordance with the conditions prevailing in the Country and in the world. Broadly speaking its purpose is to promote the pubic health and general welfare. In each case, all the facts and circumstances will require to be closely examined in order to determine whether a public purpose has been established (*Major Arjun Singh* vs *State of Punjab*) (AIR 1959 Punj 538). The land can be acquired only for a pubic purpose and what is the public purpose for which the land is required should be made known to the public so as to enable the persons interested to make an effective representation under Section 5A (1) of the Act.

Government cannot change purpose and acquired for purpose other than that declared under Section 6(2) (*Union of India, New Delhi* vs *Nandakishore and others*) (AIR 1982 Delhi 462(464). However Government can add one more purpose with the purpose which was already declared. In a Notification under Section 4(1) gave purpose of acquisition as rehabilitation of slum dwellers. The declaration under Section 6(1) added to this purpose another purpose, namely increasing housing accommodations. It was held that the addition only served to make purpose mentioned in Section 4(1) Notifications fully and more comprehensive and did not amount to introducing new purpose wholly divorced and hence the declaration is valid. (*Sivaprakasa Mudaliar* vs *State of Madras represented by the Special Deputy Collector for Land Acquisition*) (1969 IMLJ 8). The Government can amend, vary or rescind declaration and issue fresh declaration.

The declaration under Section (3) must be taken as conclusive proof of the fact that the acquisition is being made to serve a public purpose and would prove beneficial to the public.

Section 3(*f*) itself gives instances of various public purpose. There are number of cases in which the validity of public purpose are discussed. The instances of public purpose are : (1) acquisition of land for location of depot-*cum*-workshop of Transport Corporation (2) establishing a technical Institute to give technical education (3) construction of public road (4) construction of temples (5) acquisition of land for Blind Boys Academy (6) acquisition of land for purposes of parks and gardens (7) acquisition for purpose of pottery development (8) acquisition of land for providing street parking space for cars

and buses (9) acquisiton of land for providing houses for landless labourers (10) acquisition of land for seed multification farm.

ACQUISITION OF LAND FOR A COMPANY

Section 6 says that any land may be acquired for a public purpose or for a Company. No land can be acquired for a Company unless it is for public purpose. So where a declaration is made under Section 6 that a particular land is needed for a public purpose or for a Company, the owner of the land can assail the acquisition on the ground that the acquisition is for a Company which does not fall within the class of Companies envisaged in clause(aa) of Section 40(1) and even if such a Company does fall under that clause the building or work for which, the acquisition is sought to be made would not subserve public purpose (ILR 1964 Guj 472). For the purpose of acquisition of land for a Company, the requirements of Part VII must be complied with otherwise declaration under Section 6 is not conclusive. But an acquisition for a Company can also be made for a public purpose if the cost or a portion of the cost of acquisiton is to come out of public funds and in such a case it is not necessary to go through the proceedings laid down in Part VII of the Act (*Jaishri Ram Goel and others* vs *State of Punjab*) (AIR 1962 Punj 177(178). Where acquisition for Company for public purpose is made, costs need not come out of public funds. Before the machinery provided for acquisition of land is put into force for acquiring land for a Company, two conditions precedent must be fulfilled, namely,

(*i*) the previous consent of the Government must be obtained ; and

(*ii*) an agreement in terms of Section 41 must be executed by the Company.

PROVISOS UNDER SECTION 6(1)

There are two provisos under Section 6(1) of the Act. First one covers the period between Notifications under Sections 4(1) and 6(1) *i.e.* this proviso covers two periods namely (*a*) between the Acts of 1967 and 1984 and (*b*) period after the commencement of land Acquisition(Amendment)Act 1984.

First proviso covers two periods. (*a*) According to this proviso that no declaration in respect of any particular land covered by a Notification under section 4(1) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of *three years* from the date of the publication of the Notification.

(*b*) that no declaration in respect of any particular land covered by a Notification under Section 4(1) published after the commencement of the Land Acquisition (Amendment)Act 1984 shall be made after the expiry of *one year* from the date of the publication of the Notification.

This proviso covers two periods namely the expiry of three years and one year respectively. The explanation under this proviso says that computing the period of 3 years specified in this proviso any period acting which any action or proceedings to be taken in pursuance of the Notification issued under sub-section (1) of Section 4 is held up on account of stay or injunction by order of a Court shall be excluded. Reading together the words used in the proviso and explanation under the Section, the exclusion envisaged in the explanation is available in respect of all Notifications issued between 29.1.1967 and 24.9.84 (AIR 1987 Delhi 239(246). The clause (1) of proviso mandates the publication of declaration in *Official Gazette* and it should be within 3 years from the date of publication of Notification under Section 4(1) is the last of the dates referred to in Section 4(1). If the declaration under Section 6 is not made within 3 years the Notification issued under Section 4 will lapse.

In a case Notification under Section 4 was published in *Gazette* on 13th September 1980. The Notification under Section 6 was made on 13th September 1983. It was held that is within period of three years (1986 All CJ 604(606)

The period of one year is to be computed from date of publication of Notification under Section 4(1) up to date of making declaration under Section 6(1) that is up-to-date of signature of authorised person. The crucial date in considering statutory period under proviso II of Section 6, after the commencement of Land Acquisition (Amendment) Act,1984 would be date on which declaration under Section 6 was made and not date on which declaration was published (1992) 2 Kerala LT 336(338).

However the public declaration may be delayed on account of stay or injunction order. This is mentioned in explanation clause. In order to invoke Explanation I of the Section, the State Government should show that it was prevented as result of stay or injunction order from taking any proceeding further to Notification under Section 4(1). (*C. Kamatchi Ammal* vs *Kattabomman Transport Corporation Ltd.*) (AIR 1987 Madras 173(177)

If the declaration under Section 6 is made prior to the date of the publication of Notification under Section 4(1) would be completely *null* and *void*. The entire acquisition proceedings shall be deemed to have lapsed if no award is made within the prescribed period of 2 years from the date of Notification - Section 11.

The Second Proviso : This Proviso says that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company or wholly or partly out of public revenues or some fund controlled or managed by a local authority. There are two explanations to this proviso. The first explanation deals with exclusion of period as a result of stay of the Court. The explanation 2 is presumption about payment of compensation made by a Corporation owned by the State.

This proviso refers to source of compensation. It obligates only funds should be paid either by Company or wholly or partly from public revenues. The Section does not make deposit of compensation a condition precedent for making declaration. The proviso to sub-section(1) of Section 6 precludes the Government from making Notification under Section 6(1) unless (*a*) the compensation to be awarded for such property is to be paid by a Company or is to come (*b*) wholly or partly out of (*i*) public revenues (*ii*) some fund controlled or managed by a local authority where, therefore a land is being acquired for the benefit of a Company and the entire compensation is to come out of the funds of the Company, the terms of the proviso will be said to have been satisfied. However the acquisition of land will be bad when the provisions of Part VII of the Land Acquisition Act, 1984 have not been complied with (AIR 1963 SC 1890 (1892).

The essential condition for acquisiton for a public purpose is that the cost of the acquisition should be borne, wholly or in part, out of public funds. Hence, an acquisition for a Company may also be made for a public purpose within the meaning of the Act, if a part or the whole of acquisition is met by public funds. If the acquisition for a Company is to be made at the cost entirely of the Company itself, such an acquisition comes under the provisions of Part VII. (*India Copper Corporation* vs *State of Bihar*) (AIR 1961 SC 343 (345). The Notification under Section 6 must be followed by proceedings for determination of compensation without unreasonable delay.

Where the land is acquired for a Company under Section 6 does not apply unless the Company has executed an agreement, in favour of the Government mentioned in Section 41. When there is no such agreement, Notification under Sections 6 and 17 is in violation of Section 39.

The grant of a sum of money by the State Government in terms of the proviso to Section 6(1) merely means and implies that the Government associates itself with the acquisition proceedings in the view that such acquisition is intended to advance a public purpose and to the benefit of the public generally. The amount paid by the Government may be small or large

one. If, however, the entire compensation money has to be paid by a Company it is necessary to comply with the provision of Part VII of the Act.

In a case the village channel was constructed in order to enable the villagers to irrigate their lands from the main P.W.D. canal. The entire cost of the acquisition was met by the villagers. It was held even though it was for a public purpose, the requirements of proviso to sub-section need not be fulfilled because the payment of compensation was not from the 'public revenue'. ILR (1967) Cut 231.

It is at the time when declaration is made under Section 6(1) that there should be a decision or arrangement that the compensation should be paid either by a Company or out of public revenues or out of the fund of the local authority. If no such indication of the source at that stage existed, no declaration under Section 6(1) is permissible. A subsequent creation of the source *i.e.* by instructing the local authority to make a payment to the fund cannot validate a declaration not made in accordance with the requirement of the proviso.

THE PUBLICATION OF DECLARATION

The sub-section (2) of Section 6 says every declaration shall be published in the *Official Gazette* and in two daily newspapers circulating in the locality in which the land is situate, of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality. Such declaration shall state the district or other territorial division in which the land is situate, the purpose and its approximate area.

According to explanation under sub-section (2) the publication of declaration in the *Official Gazette*, the publication of such declaration in two daily newspapers and the giving of public notice (*a*) may precede each other (*b*) shall be completed within a period of sixty days. This sub-section and explanation are similar to the sub-section (1) of Section 4 and the explanation thereunder.

EFFECT OF DECLARATION

The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company as the case may be and after making such declaration the appropriate Government or the Commissioner of Land Administration as the case may acquire the land in manner hereinafter appearing. When once a declaration under Section 6 is made, the Act insists that thereafter the Collector has to take a order for acquisition of the land. It

also empowers the acquiring department to take possession of land. The Land Acquisition Officer is under a statutory obligation, after issue of Notification under Sections 4 and 6 to make enquiries, pass an Award and to take possession.

CONTINUANCE OF PROCEEDINGS

Section 7 of the Act empowers the State Government to direct the Collector to take order for the acquisition of land.

The Collector will thereupon cause the land to be marked out. He will also cause it to be measured and if no such plan has been made thereof, a plan to be made of the same.

NOTICE TO PERSONS INTERESTED

Section 9 of the Land Acquisition Act deals with issue of public notice by the Collector declaring the intention of the Government to take possession of land. Sub-section(1) says that the Collector shall then cause public notice to be given at convenient place on or near the land to be taken, stating that the Government intends to take possession of land and that claims to compensation for all interests in such land may be made to him. Such a notice will state the particulars of the land so needed. It will call upon the persons interested in the land to appear before the Collector either personally or by agent and to state (*i*) the nature of their interests in the land and (*ii*) amount and particulars of their claims to compensation and (*iii*) their objections to the measurements made under Sections. Similarly the Collector will serve notice to the occupiers of such land. He will send notice by post to the person who is interested in the land but resides elsewhere.

In (*Ramaiah Moopanar* vs. *State of Tamil Nadu* 2000) (1) MLJ 385, it was held that all notices should be served on person concerned. When such person is not available notice to be served on adult male member. If the adult male member could not be found, notice to be affixed on outer door of house in which person ordinarily resides and also affix the copy of notice in conspicuous part of land to be acquired. These are mandatory provisions and non-compliance of it, would amount to service of notice invalid.

When publication as required by Section 9(1) is made near the land in question, it is the duty of the real owner, if they so wish, to come forward and file any objections that can be filed under Section 9(2). All that is required under Section 9(2) is that a person claiming an interest in the land under

acquisition should (1) specify the interest he claims (2) specify the amount he claims for such interest and (3) give particulars of his claims to compensation. It does not require him to specify the amount of compensation he claims in respect of each of the six sub heads referred to in Section 23.

There is no provision requiring the Collector to give notice to the real owner of the land proposed to be compulsorily acquired. But Section 9(3) imposes an absolute obligation to the Collector to serve notice on occupier and a failure to give such notice gives a cause of action to challenge the award. In the case of persons interested, there is no such absolute obligation. In notice under Section 9(3) the occupier of land is entitled to 15 days clear notice.

The expression 'person interested' is defined under Section 3(*b*) of the Act (definition is explained earlier). It "includes all persons claiming an interest for compensation to be made on account of the acquisition of land under this Act, and a person shall be deemed to be interested in land if he is interested in an easement affecting the land. It will include a mortgagee, an attaching decree holder, perpetual lessee, tenant and so on.

ENQUIRY AND AWARD BY COLLECTOR

Section 11 of the Act deals with enquiry and the award by the Collector. On the day so fixed, the Collector will proceed to enquire with (*i*) the objections raised by the persons interested in the land in pursuant of notice given under Section 9, (*ii*) to the measurements made under Section 8, (*iii*) into the value of the land and (*iv*) into the respective interests of the persons claiming the compensation. Then he will make an award.

Under Section 11 it is the duty of the Collector to make an award in regard to three matters *viz*. (1) the area of the land included in the award; (2) the total compensation to be allowed for the land and (3) the apportionment of that compensation among all the persons interested in that land. (*Prag Narain* vs *Collector of Agra*) (AIR 1932 PC102(104).

The award that the Collector makes under Section 11 of the Act after holding this enquiry is not a final award binding on the claimant. It is merely a tender or an offer of an amount mentioned in the award as compensation payable by the Government to the claimant. This offer is binding only on the Government and not on the claimant who has a right under Section 18 of the Act to get the matter decided by a Civil Court. (AIR 1958 Punj 231(232).

The proviso to sub-section (1) of Section 11 says that no award shall be made by the Collector under this sub-section without the previous approval of

the appropriate Government. So the Collector's award is nothing more than an offer made by Government to the claimants whose property is acquired. Once the award was made and the possession was taken, the land owners could not be allowed to challenge the acquisition.

If at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector, he may without making further inquiry, make an award according to the terms of such agreement.

AWARD WITHIN TWO YEARS

Under Section 11 A, the Collector should make an award under Section 11 within a period of two years from the date of publication of the declaration. If no award is made within that period, the entire proceedings for the acquisition of the land will lapse. In case, the said declaration is stayed by an order of the Court, that period will be excluded for the purpose of computing the period of two years.

The date of publication of the declaration means the date of publication in the *Official Gazette*, two daily newspapers and the publication of notice of substance of such declaration at the convenient place in the locality in which the land is situated and it would be relevant date for computing two years under Section 11A. Failure to adhere to this time frame is fatal to the acquisition proceedings.

It has been pointed out in (*Ramalinga Thevar M.* vs. *The State of Tamil Nadu and others* 2000) (3) MLJ 72 (SC) that it is settled position that computation of period of two years refered in Section 11A of the Act, the period during which any action or proceedings to be taken to pursuance of the said declaration is stayed, by an order of a court shall be excluded.

In (*Prashanthi U. Represented by her Power of Attorney Agent* vs. *State of Tamil Nadu* 2000) (1) CTC 714 (DB) no award was passed within two years from the date of declaration under Secton 6 including the period in which proceedings were stayed. It was held acquisition proceedings were liable to be set aside.

AWARD OF COLLECTOR WHEN TO BE FINAL

Section 12 of the Act deals with the question as to when the award of Collector becomes final. When it is proved that the Collector has made an Award and compensation was actually paid to some person interested, under

Section 12 such an award when filed in the Collector's Office is final and conclusive evidence as between the Collector and the person interested wherein they have respectively appeared before the Collector or not, of the area and value of the land and the apportionment of compensation among the person interested.

The Collector will immediately give notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

There can be no valid notice under Section 12 (2) until the essential contents of the award are brought home to the party affected by actually communicating the award.

COLLECTOR'S CERTAIN POWERS

Sections 13, 13A, 14, 15 and 16 deal with certain powers of the Collector apart from the powers mentioned in the previous Sections 4 to 12.

Under Section 13, the Collector, may for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

The Collector can correct any clerical or arithmetical mistakes in the award made under Section 13A. He has power to summon and enforce attendance so also compel the production of documents under Section14. In determining the amount of compensation, the Collector is guided by the provision contained in Sections 23 and 24. Under Section 16 when the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

PROHIBITION ON TRANSFER OF ACQUIRED LAND

Section 16A which deals with restriction on transfer is inserted by Tamil Nadu Act 16 of 1997. This Section bans transfer of land which was acquired for public purpose by way of sale, mortgage, gift, lease, except with the previous sanction of the Government.

FORFEITURE OF LAND

Where the Government is satisfied that the land acquired under this Act for any public purpose is not used for the purpose for which it was acquired, the Government may by an order forfeit the land as penalty. Then the land shall vest in the Government free from all encumbrances - Section 16B.

SPECIAL POWERS IN CASES OF URGENCY

Section 17 of the Land Acquisition Act, 1894, confers extraordinary power on the authorities to acquire land in case of urgency, dispensing with certain necessary formalities. Under this Section the Government may direct the Collector to take possession of any land needed for public purpose on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1). This Section applied only to waste or arable land.

(1) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a riverside or ghat station or for providing a convenient connection with, or

(2) the appropriate Government consider it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity.

The land can be acquired for the public utility under Section 17(2). The lands are acquired for the purpose of maintaining road communications by invoking urgency provisions under Section 17(4).

According to Section 17(2) (*b*) whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land,

(*i*) for the purpose of any library or educational institution, or

(*ii*) for the construction, extension or improvement of :—

(a) Any building or other structure in any village for the common use of the inhabitation of such village, or

(b) Any godown for any society, registered or deemed to be registered under the Tamil Nadu Co-operative Societies Act, 1932, or

(c) Any dwelling house for the poor, or

(d) Any irrigation tank, irrigation or drainage channel or any well, or

(e) Any road.

The Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of any appropriate Government, enter upon and take possession of such land which will thereupon vest absolutely in the Government free from all encumbrances.

However the Collector in such cases should give at least 48 hours notice to the occupiers of his intention to take the possession.

Section 17(3) says that the Collector shall at the time of taking possession offer to the persons interested, compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession. In case such offer is not accepted, value of such crops etc will be included in the awarding of compensation.

Under Section 17 (3A) before taking possession of any land, the Collector shall —

(*a*) tender payment of 80% of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(*b*) pay it to them.

Section 17(3B) further says that the amount paid or deposited under sub-section (3A) shall be taken into account for determining the amount of compensation required to be tendered under Section 31.

Section 17(4) is an important provision which says that in the case of any land to which in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provision of *Section 5A shall not apply* and if it does so, direct *a declaration may be made under Section 6* in respect of the land at any time after the date of the publication of the Notification under Section 4 sub-section(1)

The Section 17 is a lengthy one consists of 4 sub sections. Sub-section(1) empowers the Collector to take possession of land in case of urgency on the expiration of 15 days from the publication of notice under Section 9(1) sub-section(2) speaks about the two things, one is acquisition of immediate possession of land for Railway administration and appropriate Government for maintenance of traffic and road communication etc., the other is taking possession by the Collector for the purpose of library or education institution or any other welfare schemes. Sub-section (3), (3A) and 3(B) are relating to payment of compensation. Lastly sub-section (4) empowers the Government, extraordinary power of dispensing with the provision of Section 5A.

A reading of Section 17 as a whole reveals that it is an integrated and inter-dependent provision. Its various sub-sections are interwoven and have to be construed together.

URGENCY

Section 17 speaks about 'special powers in cases of urgency'. The question of urgency of an acquisition under Sections (1) and (4) is a matter for subjective satisfaction of the Government and it is not open to the Court to make a scrutiny of the propriety of that satisfaction on a objective appraisal of the facts. Further where the view taken by the Government on the reports that the matter is one of urgency, is supported by the record, no question arises of interfering with the Government decision to apply the emergency provisions [ILR (1968), Madras 174 DB]. Hence the question as to whether there is an urgency or not is left to the discretion and decision of the authorities.

Section 17(4) dispenses with the enquiry under Section 5A. The phrase 'in case of urgency' in Section 17(4) has to be read in the light of the provision of Section 5A of the Act. The urgency must be such that the period required for inquiry under Section 5A of the Act would cause great prejudice or inconvenience so as to defeat the very purpose of acquisition and the acquisition cannot be fulfilled. (*Natwarlal Jerambai Patel* vs. *The State of Gujarat.*) (AIR 1971 Gujarat 264 (266)

It has been held that, whenever Section 5A enquiry is dispensed with although for providing house-sites for Harijans, the Court must examine whether there are materials before the authority that would reasonably justify dispensing with Section 5A enquiry and whether the authority has hereby applied its mind to those matters and excluded all irrelevant considerations. Dispensing with Section 5A enquiry cannot be a matter of routine (1983) Andhra Pradesh W.R, 354)

In (*Kamichetty Thiru Kameshwar Rao* vs. *Union of India and Others*) [2000 (3) MLJ 72 (SC)] it has been pointed that providing house site to the poor is an urgent necessity and exercise of the power under Section 17(4) to dispense with the enquiry under Section 5A would be justified. In that circumstances the same cannot be interfered with.

Where effluent discharge of paper unit causing public nuisance and therefore High Court can direct the construction of drains for proper disposal of effluent discharge within specified period. In such case invoking of urgency provisions under Section 17(2)(*c*) would be proper .

Likewise where acquisition is necessary for providing house site to displaced persons due to floods, the urgency clause dispensing with Section 5A enquiry can be rightly invoked.

THE EFFECT OF SECTION 17

Section 17 confers on the authorities an extraordinary power, under which once the appropriate authority is satisfied about the urgency of acquisition of land, it dispenses with the normal procedure laid down in the Act and the right of the citizen to object under Section 5A of the Act is taken away. There can be no doubt that once a right is being taken away, the Notification, by which such right is taken away, must adhere strictly to the requirements of the Statute, and unless the Statutory requirements satisfied the jurisdiction to invoke the Statutory power, by which the right is annulled, cannot be invoked [(1969) 35 Cut LT 1067]

The urgency in regard to acquisition of land would arise when the public purpose is to be urgently implemented and when such situation arises, the two stages of possible delay in the acquisition of land, one by holding the inquiry under Section 5A and the other by going through the award proceedings are permitted to be eliminated by the Government. [ILR(1967) Gujarat 620] The right of hearing under Section 5A is a valuable right. In the absence of justifying circumstances Notification under Section 17(4) dispensing with application of Section 5A could not be sustained.

CONDITIONS FOR THE APPLICATION OF SECTION

The conditions for the application of such Section (4), read with sub-section (1) of Section 17 of the Act are —

(*a*) satisfaction as to the urgency for the acquisition which is a subjective condition of the State Government ; and

(*b*) the lands in question being waste or arable which is an objective condition.

Section 17(4) cannot be applied to any land which is shown not to be arable or waste. [*Jatadhar Mitra and others* vs *The State of West Bengal.* (AIR 1970 Cal 90)].

The use of the emergency powers cannot be lightly resorted to and can be applied only in cases of real urgency, for their application would mean that the person whose land is acquired is deprived of an opportunity to make his representation in respect of the existence of public purpose or the need to acquire a particular land or to suggest an alternative land for acquisition. It is considered as the valuable right of the owner. That right can only be deprived of for proper reasons. With regard to construction of bus stand and shopping

centre for Panchayat, the reason given for invoking emergency provision was the danger of sanctioned amount may lapse. This was not upheld by the Court. In case if a project is pending for several years, suddenly invoking Section 17 would not be permitted. The real urgency must exist.

The question as to whether there is an urgency or not is left to the discretion and decision of the authorities. The urgency envisaged by Section 17(1) is subjective. The Government state in Notification its satisfaction about urgency.

The another condition mentioned under this is the land must be waste or arable. It is restricted to only waste and arable land and not to other kinds of lands. Whether lands is waste or arable is an objective fact. Waste land means land which is unfit for cultivation or habitations desolate and barren land with little or no vegetation thereon. Arable land means land which is mainly used for ploughing and for raising crops in the land which is capable of being ploughed or fit for tillage. Therefore the Notification can be issued in respect of land covered by trees and crops also. The urgency proceeding does not apply to cultivated land. The land planted with casurina trees is arable land. The land which is used by growing fruit bearing trees cannot be said to be waste.

NOTIFICATION UNDER SECTION 17

Even in cases of urgency, issuance of Notification under Section 4 is a condition precedent to the exercise of any further powers under the Act. There is no illegality in the issuance of Notification under Section 4 coupled with a direction under Section 17(4) it is necessary that the Government must first take a decision to make a Notification under Section 4 and then take another decision to issue direction under Section 17(4).

It is obligatory to publish a declaration under Section 6(2) only after the publication of the Notification under Section 4(1). Under Section 17(4) a declaration may be made under Section 6 at any time after the publication of the Notification under Section 4(1) and not before.

PAYMENT OF COMPENSATION

Land owners would be entitled to compensation under Section 17(3) and 3(A) on date on which possession of land was taken. Where building was demolished for road widening and site was acquired urgently, Municipal Corporation has to deposit 80 per cent of compensation while awarding compensation with regard to trees, crops standing over the acquired land. The officers and Courts should take a liberal view to deprive the interested persons of the compensation legally due.

When land is acquired under Section 17, for a public purpose, the public purpose must continue to subsist with the land vesting in the State, failing which acquisition proceedings are void.

SECTION 17(1) AND SECTION 17(4)

Section 17(4) speaks about the exceptional measure of dispensing of Section 5A. Elimination of enquiry under Section 5A must be justified by some exceptional and genuine reasons. The difference between Section 17(1) and Section 17(4) is this. The power under Section 17(1) could be involved only after the stage has been reached when notices are issued under Section 9 which must itself be only after hearing objections under Section 5A. But where action is taken under Section 17(4) ; Section 5A will have no application (AIR 1954 Madras 481DB), Further sub-sections (1) and (4) of Section 17 are two independent provisions capable of being enforced at two different stages of land acquisition proceedings. Action under Section 17(1) can be taken only after Notification under Sections 4 and 6 and the notice under Section 9(1) have been issued and objections if any, under Section 5A have been disposed of. But the only condition precedent to the exercise of the power under Section 17(4) is that the appropriate Government should be of the opinion that Section 17(1) and (2) apply to that case both the sub-sections provide for cases of urgency. (*Hakim Singh* vs *State of Uttar Pradesh and others*.) (AIR 1970 Allahabad 151)

REFERENCE TO COURT

Part III of the Land Acquisition Act deals with reference to the Court, determination of compensation and other related matters.

Section 18 of the Act deals with the reference to the Court. Under this Section any person interested who has not accepted the award may by written application to the Collector, require that the matter may be referred by the Collector for the determination of the Court. His objection may be (*i*) to the measurement of the land (*ii*) the amount of compensation (*iii*) the person to whom it is payable or (iv) the apportionment of compensation among the persons interested. For this purpose he must state the grounds of objection and the application must be within time prescribed.

ESSENTIAL CONDITIONS

(1) There must be existence of an award,

(2) The application must be by a person who has not accepted the award,

(3) It must be in writing and must be made before the Collector and require him to refer the matter for determination of the Court,

(4) It should state the grounds of objections to the award, and

(5) The application has to be made within the period of limitation specified in the proviso of the Section.

Now let us consider the conditions mentioned above in detail. The matters to be considered are who can file an application? Whom it should be submitted? What are the grounds of objection? and finally what is the limitation period?

The section pre-supposes the existence of award. Then only application under Section 18 can be made when the compensation awarded in pursuance of award is accepted under protest. The right to seek reference is not affected. The award by the Collector is nothing but an offer made by the Government. If the claimants are dissatisfied with the award, then alone they are required to move the Civil Court.

The next condition for invoking Section 18 is that the application can be made by any person interested who has not accepted the award. It is nowhere the requirement of law that a person should be the owner before he can claim reference. Even a person in possession of property as a tenant is a person interested within the meaning and ambit of Section 18. An application under Section 18 has to be made by an interested person which is defined in Section 3(b) as including a person claiming an interest in the compensation. It is immaterial whether there is any substance in the claim made by the person applying. [*Smt. Kakobai* vs *The Land Acquisition Officer* (AIR 1956 Punjab 231 (232).] Thus it is evident that the expression includes all persons directly or indirectly interested in the title of the land or the amount of compensation.

The next requirement of this section is the application must be in writing and addressed to the Collector and request the Collector to refer the matter to the Court. The person aggrieved is not entitled to make application directly to Civil Court under Section 18(1). The Collector has no power under Section 18 to make a reference *suo moto* though even power is available to him under Section 30. The application to the Collector to refer the Court, must be taken as equivalent to an application to Court, when the person interested have not accepted the award. When the application is made, the Collector has no option except to refer to the Court. The Acquiring Officers — Award is not an award but an offer. His proceedings are administrative

rather than judicial. But if this award is not accepted and the matter is taken into the Court, the proceedings are hence forward judicial in character. It is not open to the Collector to decide an application under Section 18 on merits of the objection raised therein and then refuse to refer the matter to Civil Court. All that the Collector can do is to decide whether the formalities laid down in Section 18 have been complied with or not. A person who has not accepted this offer or tender has an absolute right to get the matters determined on all matters mentioned in Section 18 by a Civil Court provided he conforms to the formalities laid down in this Section (AIR 1956 Punjab 231 at (232).

The fourth requirement for the application of Section 18 is that the objector should set out every objection and state ground on which objections are taken. The objections not raised before the Land Acquisition Officer cannot be raised for the first time upon a reference under Section 18. The claimant must stick to ground of objections raised under one of the headings in sections under Section 18. The grounds specified under Section 18 are (1) measurement of the land (2) the amount of compensation (3) the persons to whom it is payable, and (4) the apportionment.

Then the application must be within the time limit prescribed. The limitation runs from the date of filing of award. Proviso (*a*) to Section 18(2) say it must be made within 6 weeks from the date of the Collector's award, whether the person making it was present or represented before the Collector. In case of a person who had notice of the award, the limitation would be six months from the date of his knowledge of essential contents of the award under proviso (*b*) to Section 18(2). The expression the 'date of the award' used in proviso (*b*) to Section 18(2) of the Act must mean the date when the award is either communicated to the party or is known by him either actually or constructively.

The Reference Court is a original Court and not a Court of appeal and can determine the value afresh on the basis of the material produced & before it - [*The Special Tahsildar (Land Acquisition) Krishna Water Supply Project Scheme Tiruvallur* vs. *G. Natesan and others* 2000 (3) MLJ 798 DB.]

Section 30 deals with the dispute as to apportionment. Under this Section, the Collector himself can refer the dispute to the decision of the Court. Now we can distinguish Section 18 with the Section 30. (1) The reference under Section 18 arises on an application by an interested party to the Collector, while the reference under Section 18 is on the own motion of the Collector or the Acquisitioning Officer. (2) Section 30 is confined to the question of title, while under Section 18 the matters relating to measurement, compensation

and apportionment are to be determined. (3) Under Section 18, the Collector must make the reference if the application satisfied the various requirements as provided under sub section (1) and (2) of that Section. Under Section 30, it is left on the discretion of the Collector to refer or not. (4) Under Section 18, the reference cannot be refused on the ground that the objection are not *bona fide* or are frivolous. In Section 30, there is a decision of the Collector, where as under Section 18, the decision is left to the Court. (5) The stipulation of time as to limitation is only provided in Section 18, but if the application is received beyond time, the Collector has the option to refer it to the District Judge.

DETERMINATION OF COMPENSATION

Sections 23,24 and 24A deal with matters relating to determination of compensation by the Court. Section 23 speaks about the matters to be considered in determining compensation. Section 24 on the other hand speaks about what are the matters to be neglected in determining compensation. Further provisions for determining compensation are discussed under Section 24A.

Section 23 elaborately speaks about matters to be taken into consideration by the Court in determining compensation. The following are to be considered:-

First the market value of the land at the date of the publication of the Notification under Section 4(1).

Secondly the damage sustained by the person interested, *by reason of the taking of any standing crops or trees which may be on the land* at the time of the Collector's taking possession thereof.

Thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, *by reason of surveying such land from his other land.*

Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, *by reason of the acquisition injuriously affecting his other property* movable or immovable, in any other manner or his earnings.

Fifthly, if in consequences of the acquisition of the land by the Collector, the person interested is *compelled to change his residence or place of business,* the reasonable expenses (if any) incidental to such change, and

Sixthly, the damage (if any) *bona fide* resulting from diminution of the profits from land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.

The Section mentions what are matters that can be taken into consideration. The Section is illustrative and not exhaustive. The idea of the principle is to provide complete indemnity to the owner who has deprived of his land. So it must be construed liberally in favour of public and strictly against the Government. Once possession has been taken, award of Collector becomes binding on Government.

In number of cases Courts have laid down general principles in determining the amount of compensation. Broadly they are based on the following principles namely : (1) comparable sales method of valuation (2) capitalisation (3) experts or valuer's opinion (4) potential value (5) other factors

1. COMPARABLE SALES METHOD OF VALUATION

Under Section 23, the compensation which is payable to claimant is the market value of land at the date of publication of Notification under Section 4(1) of the Act. The market value means the price that a willing purchaser would pay to a willing seller for property having due regard to its existing condition, with all its existing advantages, and its potential possibilities when laid out in its most advantageous manner, excluding any advantages due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired. (*Raghuban Narain Singh* vs *The State of Uttar Pradesh.*) (AIR 1967 SC 465(467). Thus it is price which a normal and prudent buyer wants to pay after evaluating the prices prevailing in the roundabout area and which a normal and prudent seller is willing to accept. It is therefore the consensus between the buyer and the seller which would decide the price at which a particular property is bought or sold.

The market value of the acquired land can be determined on the basis of the price of another comparable land situated in same area even if the sale of land had taken place subsequent to Notification under Section 4(1). *A.V. Swaminathan Pillai* vs *R. D. O. of Chidambaram.*(1991)2MLJ 244(248). This is one of the recognised principles determining the market value with reference to the price fetched by sale deeds effected recently of land with similar advantages situate in the neighbourhood. The underlying principle of fixing the market value with reference to comparable sales is to reduce the element of speculation. The main features in comparable sales are : (*a*) it must be within a reasonable time of Notification ; (*b*) it must be sale of land or

of land adjacent to land acquired ; (*c*) it should be *bona fide* transaction ; and (*d*) it must posses similar advantages. (1995) AIHC 892(895) (DB) (Bombay).

The method of determination of compensation was discussed in the (*Executive Director* vs. *Sarat Chandra Bisoi* 2000 (ii) CTC 555.) In this case it was mentioned that the method to arrive at compensation is to find out market value of land prevailing on the date of Notification issued under Section 4(1) of the Act. When there are no sale of compoundable value on and around date of Notification alternative method could be adopted. One such method is to find out annual income of land which owner had been deriving and expected to derive from use of land and capitalise the same by multiplier.

Where there are several comparable sales or awards pertaining to different lands, the Court has to choose that sale or award relating to a land which closely compares with the plot of the land the market value of which it has to determine and to take the price of land of such sale as to basis for determining the market value of the land under consideration the proportionate increase in market value is to be given if there is difference of time between award relied upon and issuance of Notification.

Smaller lands : The small plots generally fetch a higher value than larger plots for the simple reason that there are more ready purchasers of small plots. There can therefore be no comparison between the value of small plot and a large plot (1968) 2SCWR 692(696). So the value fetched for small plots cannot be applied to lands covering a large area.

The value of small pieces of lands will always be on higher side because large piece of land may not fetch same price as smaller pieces of land. [*The Executive Director* vs. *Sarat Chandra Bisoi* 2000 (ii) CTC 555 (SC).]

2. CAPITALISATION

When the sale deed produced as example was not capable of forming basis for determination of market value of the acquired land, the proper course is to fix the value as per capitalisation method [*Secretary, Karnataka Electricity Board* vs *Assistant Commissioner, Gadag* (1955)3JT (SC)184(185).] The capitalised value of a property is the amount of money whose annual interest at the highest prevailing interest at given time will be its net annual income (*Union of India* vs *Smt.Shanthi Devi*) (AIR 1983 SC 1190). The rate of capitalisation depends on the circumstances of each case. The situation of the property, the age of building, its potential and all other surrounding

circumstances have to be borne in mind before a multiple is thought of, for capitalisation. The multiple method of capitalisation is only a guide to make a reasonable guess work. Where determination of compensation was to be made on basis of capitalisation principle, the proper multiplier would be 15 years' purchase and not 20 years' purchase. (*Union of India* vs *Smt. Shanthi Devi*) (AIR 1983 SC 1190) It has been held that where acquisition of land is made with building the mode of capitalisation of return is the permissible.

3. VALUER'S OR EXPERT'S OPINION

Another mode determination of compensation is the evidence of expert or valuer. It is most often required where there are structures or other improvements on land. The expert evidence thought of great assistance in determining compensation has its limitations. It abounds with uncertainty and gives more than ordinary scope for guess work. The opinion of surveyor may be taken into consideration provided they are strictly based on facts.

4. POTENTIAL VALUE

Section 23 requires that the market value of the acquired land must be estimated not by the existing use of such land but the best use of which a willing purchaser would make of it and therefore its potentiality in foreseeable future either as a building or an industrial site should be taken into account (1968 (1) SC WR 692). Hence before the value of the land is determined, it is necessary to have a look at the potential value of the land in dispute. Where the acquired land is situated in main road surrounded by bus stand, ice factory, petrol pump, it has great potential value. The land which is away from the road will always have lesser commercial value.

While determining compensation various factors like location, importance, prospect and purpose of the land to be acquired should be considered. Proximity to an important road, important offices of Government, residential houses, shops and potential use of residential purposes would call for a higher compensation for land [1989 Pat LJR 676 (679)].

5. OTHER FACTORS

Apart from the modes just we have seen above there are certain other factors, which may be considered in determining the compensation.

Similar lands : The market value of certain property is to be valued from the price recently obtained for lands more or less similarly situated in the

same neighbourhood. Precise situation of the land is a matter of importance in enhancing or lowering the price. However the value of similar neighbouring plots is not necessarily conclusive as circumstances of each land may vary.

Garden lands : The land which grows trees should be evaluated at least one and half times than the land which does not grow. The approved method for valuing orchard is to capitalise their net income at the number of year's purchase which has to be fixed with reference to the nature of trees and other circumstances.

Building : A well recognised basis of valuation of buildings in urban area is the rent normally realised by these when these are leased to others and the rent expected to be got, if these are in occupation of the owners.

The loss of income is a factor to be taken into consideration in fixing the market value of the land itself, which owner is to get under clause 4 of Section 23. The loss of income under this clause is the loss of personal income to owner of land. Similarly the injury of other property or portion of the same property consequent on acquisition is to be compensated.

ADDITIONAL COMPENSATION

Under Section 23(1A) in addition to market value of the land, the Court will in every case award an amount be calculated at the rate of 12 per cent on such market value for the period commencing on and from the date of publication of the Notification under Section 4(1) in respect of such land to the date of the award by the Collector or the date of taking possession of the land whichever is earlier.

Further under Section 23(2) in addition to the market value of the land, as above provided, the Court shall in every case award a sum of 30 per cent on such market value in consideration of the compulsory nature of the acquisition.

RESTRICTION ON WITHDRAWAL OF AMOUNT

The amount of compensation awarded by any Court under this Act shall be deposited in that Court and the Court shall not allow the person interested to withdraw such amount till the final disposal of the matter in this regard in the highest forum (Section 23A) . The Section 23A is a new Section inserted by the Government of Tamil Nadu in 1997. The Court has a discretion to permit the person to withdraw the amount awarded by the Collector in a case of absolute necessity.

MATTERS TO BE NEGLECTED IN DETERMINING COMPENSATION

Section 24 of the Land Acquisition Act, 1894 enumerates the matters which must be neglected in determining compensation. They are —

firstly, the degree of urgency which has led to the acquisition ;

secondly, any disinclination of the person interested to part with the land acquired ;

thirdly, any damage sustained by him which if caused by a private person, would not render such person liable to suit ;

fourthly, any damage which is likely to be caused to the land acquired after the date of publication of the declaration under Section 6, by or the consequence of the use to which it will be put ;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ;

seventhly, any outlay or improvements on, or disposal of the land acquired, commenced, made or affected without the sanction of the Collector after the date of the publication of the Notification under Section 4 sub-section(1) ; or

eighthly, any increase to the value of the land on account of its being put to any use which is forbidden by law or opposed to public policy.

AMOUNT OF COMPENSATION

Section 25 clearly indicates the maximum and minimum compensation which can be awarded by the Court. It says the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11 and shall not be more than the amount claimed by the person interested.

Before the Land Acquisition Officer and before the Reference Court, the Land owner can make claim for higher compensation even though claimant made lesser claim earlier. [*The Special Tahsildar (Land Acquisition) Krishna Water Supply Project Scheme* vs. *G. Natesan and others*] 2000 (3) MLJ 798 (DB).

The award which the Court passes must be in the form of a judgment containing the statement of the grounds for the award. It must be in writing

signed by the Judge. Every award shall be deemed to be a decree and the statement of the grounds of every such award a judgment.

Section 27(1) empowers Court to order costs against any person whether he is party to the proceedings or not. The Court has discretion to pay interest on excess compensation. A provision has been made for the redetermination of the amount of compensation on the basis of the award of the Court.

APPORTIONMENT OF COMPENSATION

Part IV of the Land Acquisition Act, 1894, deals with the question of apportionment. According to Section 29, where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of apportionment. This Section speaks about the situation, where several persons agree to the apportionment of the compensation. The Section 30 deals with the situation where there is dispute as to apportionment. When the amount of compensation has been settled under Section 11 if any dispute arises as to the apportionment of the same or any part thereof or as to person to whom the same or any part of thereof is payable, the Collector may refer such dispute to the decision of the Court.

In fact Section 30 gives the discretionary power to the Collector to refer the dispute to the decision of the Court. For the applicability of Section 30, all that is required is to show that the amount of compensation has been settled under Section 11 and that there is a dispute for the apportionment of the amount of compensation or any part thereof. There may be also dispute as to the persons to whom the same or any part thereof is payable. If these conditions are fulfilled it is within the discretion of the Collector as to whether the dispute be referred to the Court or not. However the discretion has to be exercised in accordance with law and not on extraneous grounds.

Reference under Sections 18 and 30 are quite distinct and independent of each other. Section 18 contemplates a case of reference when the quantum of compensation was disputed by the person interested and Section 30 contemplates a reference, when there is a dispute as to the title of the land acquired. A person covered under Section18, who failed to seek a reference under Section 18 within the period of limitation cannot ask the Collector to exercise his powers under Section 30 nor could he file a suit. Only those not falling under Section 18 could seek a reference under this Section or file a suit.

The Collector is not authority to decide finally the conflicting rights of the person interested in the amount of compensation and its apportionment. Such dispute has to be decided either by reference under Section 18 or under Section 30 or in a separate suit. The Collector can make a reference *suo moto*. There is no provision for limitation. A reference regarding any dispute as to the persons to whom the compensation is payable is really in the nature of an interpleader suit.

PAYMENT OF COMPENSATION

Sections 31 to 34 deals with payment of the compensation. Section 31(1) refers tendering of the compensation by the Collector. It says that, on making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto and shall pay it to them. Sub-section(2) mentions the circumstances under which the Collector is bound to deposit the amount of the compensation. When the award as to the amount has become final, all questions as to fixing of compensation are then at an end, the duty of the Collector in case of dispute as to the relative rights of the persons together entitled to the money is to place the money under the control of the Court and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be.

The circumstances mentioned under sub-section(2) are, (*i*) nonconsent of the parties to receive the compensation, (*ii*) absence of the competent person to alienate the land, and (*iii*) dispute as to the title to receive compensation or as to the apportionment of it. In these circumstances the Collector has to deposit the amount of the compensation.

Section 34 provides the payment of interest by the Collector when the amount of such compensation is not paid or deposited on or before taking the possession of the land.

ACQUISITION OF LAND FOR COMPANIES

Part VII of the Land Acquisition Act, 1894, deals with the acquisition of land for Companies. Section 38A deals with the question of which is deemed to be a Company for the purpose of acquisition of land under this part. An industrial concern ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the erection of dwelling houses for

workmen employed by the concern or for the provision of amenities directly concerned therewith is deemed to be a Company for the purposes of this Part.

The conditions, therefore to be satisfied are : (1) The industrial concern should consists of not less than 100 workmen (2) It may be owned by an individual or an association of individuals and (3) The acquisition must be for the erection of dwelling houses for workmen or for the provision of amenities.

CONSENT AND AGREEMENT

Section 39 imposes two conditions in order to put provisions Sections 6 to 16 and Sections 18 to 37 in force. They are (*i*) previous consent of the Government and (*ii*) agreement by the Company with the Government. Unless the work was likely to prove useful to public directly and unless there is an agreement between the Company and the appropriate Government the acquisition cannot be regarded as valid. Section 40 puts another condition namely, the enquiry and satisfaction of the Government. Where the land for the Company was acquired but the Collector did not make enquiry with regard to the need of acquisition, such absence of enquiry rendered the consent of the Government under Section 39 illegal. The enquiry was a must because the Government was to satisfy itself that the work was proposed to be constructed was likely to prove useful to the public. A land cannot be acquired both for the Company and the State Government.

PREVIOUS ENQUIRY

Section 40 says that such consent shall not be given unless the appropriate Government be satisfied either on the report of the Collector under Section 5A sub-section(2) or by an enquiry. So it is clear that before the Government gives its consent it must satisfy either with on the report of the Collector or by an enquiry.

PURPOSES OF ACQUISITION : Section 40 further says about the purposes of the acquisition. They are :—

(1) To obtain land for the erection of dwelling house for workmen employed by the Company or for the provision of amenities directly connected therewith, or

(2) for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or

(3) for the construction of some work and that such work is likely to prove useful to the public.

The proper construction to be put on Section 40 is whenever there is a public purpose, Government can make acquisition whether it is for a Company or not. But in the case of Company whether an acquisition is sought to be made for one of the purpose mentioned in the Section 40, it could be validly done without references to the question whether it is a public purpose or not. (*A. Natesa Asari* vs *State of Madras and another*) (AIR 1954 Mad (481(482)DB)

The Section insists that the consent to be given only on the satisfaction of the Government. It is the Government and not the Court who has to satisfy itself if the purpose for which the land is sought to be acquired is a public purpose. The question whether a factory can or cannot be a work likely to be useful to the public within the meaning of Section 40 and is or is not a work of which public can be entitled to any use in the manner contemplated by Section 41 and 42 of the Land Acquisition Act, depends upon the satisfaction of the State Government. The satisfaction of the State Government is a subjective satisfaction and it is not open to the Court to examine the grounds upon which it is founded. The consent can be given on satisfaction arrived at from report under Section 5A or even after enquiry held under Section 40(2) and (3).

The owners of lands sought to be acquired for a Company are entitled to an opportunity of being heard in an enquiry under Rule 4 of the Land Acquisition (Companies Rules(1963) and in an enquiry under Section 40 of the Act. In the absence of such an enquiry the acquisition proceedings are vitiated.

What is necessary for the compliance with Section 40(1)(*b*) and Section 42 is that not only the work must be useful to the public but the agreement must also contain terms on which public is entitled as of right to use the same. The Section 40(1) (*aa*) applies as well as to Companies in private sector provided it subserves the general public or a section thereof. What the provisions of Sections 40 and 41 require is that the work should be directly useful to the public and the agreement shall contain a term how the public shall have the right to use the work directly themselves. It seems that under the relevant words in Section 41(1)(*b*) and 41 it is work like a hospital, that can be used by the public. The work contemplated is a work from the construction of which the public can in anyway derive benefit. [*R.L. Arora* vs *State of Uttar Pradesh & others.*] (AIR 1963 SC 764)

COMPANY'S AGREEMENT WITH THE GOVERNMENT

Section 41 says after the compliance of the provisions of Section 40 , the Company has to enter in to an agreement with the appropriate Government

with respect to : (*a*) payment of cost of acquisition to the Government ; (*b*) the transfer of land to the Company ; (*c*) the term on which the land shall be held by the Company ; and (*d*) other terms and conditions relating to time within which dwelling houses or amenities or building or work shall be erected or provided or constructed or executed.

Where the acquisition of land is for Company previous consent of the Government and the execution of agreement by Company are absolutely necessary. So provision of Sections 6 to 37 shall not be put into force in order to acquire land for any Company unless with previous consent of the Government the Company has executed the agreement provided in Section 41 of the Act. For enforcing the provisions of Sections 6 to 37, the two requirements namely ; (*i*) the previous consent of the Government and (*ii*) an agreement as contemplated under Section 41, are to be fulfilled. Further Section 41(5) casts a duty on the Government when it takes an agreement under Section 41 to satisfy itself that the public is so entitled to use the work in question. In case the lands were acquired for establishment of factory by a Company for manufacturing sewing machines, the acquisition is for public purpose as it will provide employment to many persons, lessen imports and supply much needed things (AIR 1963 Andhra Pradesh 383).

The agreement contemplated under Section 41 must also contain terms on which public is entitled as of right to use the same. The agreement as maintained under Section 41 should be published soon after the execution (Section 42).

Section 43 provides the provisions of Part VII for acquisition of land for Companies do not apply to the case of acquisition of land for railway under an agreement between the Company and Secretary of State for India by the Government is bound to provide land.

RESTRICTION ON TRANSFER ETC

Where the lands are acquired for a Company, that Company for which the land is acquired is not entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government. Section 44A prohibits such transfer. The Amendment made by the Government of Tamil Nadu provides that in case of any contravention, to declare such transfer as *null* and *void* and forfeiture of land as penalty under Section 44A(2).

A Private Company can acquire the land under this Act only.

APPENDIX

[1]THE TAMIL NADU ACQUISITION OF LAND FOR HARIJAN WELFARE SCHEMES ACT, 1978

(Tamil Nadu Act No.31 of 1978)

An Act to provide for acquisition of land for Harijan Welfare Schemes.

BE it enacted by the Legislature of the State of Tamil Nadu in the Twenty-ninth Year of the Republic of India as follows :

1. Short title, extent and commencement :— (1) This Act may be called The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978.

(2) It extends to the whole of the State of Tamil Nadu.

[2](3) It shall come into force on such date as the Government may, by Notification, appoint.

2. Declaration :— It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles laid down in Part IV, and in particular Article 46 of the Constitution.

3. Definitions :— In this Act, unless the context otherwise requires :

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1. Received the assent of the President on 7th December,1977. As published in the *Tamil Nadu Government Gazettle Extraordinary* dated 25th August,1978.
2. This Act has come into force on the 24th September 1979 *vide* G.O.No.1628 Social Welfare, dated 24th September, 1979.

(*a*) **"Building"** includes a house, out-house, stable, latrine, shed, hut, wall and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever;

(*b*) **"Corporation"** means a Company or Corporation owned or controlled by the Government ;

(*c*) **"Court"** means - (*i*) in the City of Madras, the Madras City Civil Court ; (*ii*) elsewhere, the Subordinate Judge's Court having jurisdiction, and if there is no such Subordinate Judge's Court, the District Court having jurisdiction.

(*d*) **"Government"** means the State Government.

(*e*) **"Land"** includes building and benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

(*f*) **"Harijans"** means members of the Scheduled Castes include Scheduled Tribes.

EXPLANATION — (1) **"Scheduled Castes"** means the castes, races or tribes or parts of, or groups within, castes, races or tribes specified in the Constitution (Scheduled Castes) Order, 1950, made by the President under Article 341 of the Constitution as amended by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 (Central Act 108 of 1976).

(2) **"Scheduled Tribes"** means the tribes or tribal communities or parts of, or groups within, tribes or tribal communities, specified in the Constitution (Scheduled Tribes) Order, 1950 made by the President under Article 342 of the Constitution as amended by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1978 (Central Act 108 of 1976)

(*g*) **"Harijan Welfare Scheme"** means any scheme for provision of house-sites for Harijans for constructing, extending or improving any dwelling house for Harijans or for providing any burial or burning grounds for Harijans or for providing any pathway leading to such dwelling house, burial or burning grounds, or for providing any other amenity for the benefit of Harijans ;

(*h*) **"Owner"** includes any person, who is receiving or is entitled to receive the rent of any land or building, whether on his own account or on behalf of himself and others or as an Agent, Trustee, Executor, Administrator, Receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the land or building were let to a tenant ;

(*i*) **"Person interested"** in relation to any land or building, includes any

person claiming, or entitled to claim, an interest in the amount payable on account of the acquisition of that land or building under this Act.

(*j*) **"Prescribed Authority"** means any authority or Officer authorised by the Government in this regard, by Notification.

4. Power to acquire land :— (1) Where the District Collector is satisfied that for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any land, he may acquire the land by publishing in the *District Gazette* a notice to the effect that he has decided to acquire the land in pursuance of this Section.

(2) Before publishing a notice under sub-section(1), the District Collector or any Officer authorised by the District Collector in this behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the Officer so authorised may be interested in such land, to show cause why it should not be acquired.

(3) (*a*) The District Collector may, where he has himself called upon the owner or other person to show cause under sub- section(2), pass such orders as he may deem fit on the cause so shown.

(*b*) Where any Officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section(2), the Officer so authorised shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. After considering such report the District Collector may pass such orders as he may deem fit.

5. Land acquired to vest in Government free from all encumbrances :— When a notice under sub-section(1) of Section 4 is published in the *District Gazette*, the land to which the said notice related shall, on and from the date on which the notice is so published vest absolutely in the Government free from all encumbrances.

6. Right to receive amount :— Every person having any interest in any land acquired under this Act shall be entitled to receive and be paid an amount as hereinafter provided.

7. Determination of amount :— (1) The amount payable in respect of any land acquired under this Act shall be the market value of such land on the date of publication of the notice under sub-section (1) of Section 4.

(2) In addition to the market value of the land as provided above, the prescribed authority shall in every case award a sum of fifteen per centum on such market value as solatium in consideration of the compulsory nature of the acquisition.

(3) The prescribed authority shall, after holding an inquiry in the prescribed manner, determine by order the amount payable under sub-section (1). A copy of the said order shall be communicated to the owner of such land and every person interested therein.

8. Matters to be ignored in determining the amount :— In determining the amount under Section 7, the following factors shall not be taken into account, namely, —

(*a*) the degree of urgency which was led to the acquisition ;

(*b*) any disinclination of the person interested to part with the land acquired ;

(*c*) any damage sustained by him which, if caused by a private person, would not render such person liable to a suit ;

(*d*) any damage which is likely to be caused to the land acquired, after the date of publication of the notice under sub-section(1) of Section 4, by or in consequence of the use to which it will be put ;

(*e*) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

(*f*) any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ;

(*g*) any increase to the value of the land by reason of the use thereof in a manner which is detrimental to the health of the occupants of the land or to the public health ;

(*h*) any outlay or improvement, or disposal of, the land acquired, commence, made or effected without the sanction of the prescribed authority after the date of the publication of the notice under sub-section (1) of Section 4.

9. Appeal against order of amount determined :— Any person who does not agree to the amount determined by the prescribed authority under sub-section (2) of Section 7 may prefer an appeal to the Court within such period as may be prescribed.

10. Apportionment of amount determined :— (1) where several persons claim to be interested in the amount determined by the prescribed authority shall determine the persons who, in its opinion, are entitled to receive the amount and the amount payable to each of them.

(2) If any dispute as to the apportionment of the amount or any part thereof, or as to the persons to whom the amount or any part thereof is payable, the prescribed authority may refer such dispute to the decision of the Court

and the Court shall in deciding any such dispute follow as far as may be, the provisions of Part III of the Land Acquisition Act, 1894 (Central Act I of 1894).

11. Payment of amount :— (1) After the amount has been determined, the prescribed authority shall tender payment of the amount to the persons entitled thereto and shall pay it to them,

(*i*) in a lump-sum in a case where it does not exceed two thousand rupees, and

(*ii*) in all other cases, in such number of equal annual instalments not exceeding five as may be determined by the prescribed authority and the amount of each such annual instalment shall not be less than two thousand rupees.

Provided that where the balance of the amount due in any instalment is less than two thousand rupees, only the amount so due shall be paid.

(2) If the persons entitled to the amount do not consent to receive it or if there be no person competent to alienate the land or if there be any dispute as to the title to receive the amount, or as to the apportionment of it, the prescribed authority shall deposit the amount in the Court, and the Court shall deal with the amount so deposited in the manner laid down in Sections 32 and 33 of the Land Acquisition Act, 1894 (Central Act I of 1894)

12. Payment of interest :— When the amount is not paid or deposited on or before taking possession of the land, the prescribed authority shall pay the amount with interest thereon at the rate of six per cent per annum from the time of so taking possession until it shall have been so paid or deposited and such interest shall be paid or deposited by the prescribed authority in the same manner as provided for the amount.

13. Appeal to High Court :— Subject to the provision of the Code of Civil Procedure, 1908 (Central Act V of 1908) applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, a second appeal shall lie to the High Court from any decision of the Court under this Act, if the amount as determined by the prescribed authority exceeds such sum as may be prescribed.

14. Power of prescribed authority in relation to determination of amount:— (1) the prescribed authority may, for the purpose of carrying out the provisions of this Act, by order require any person to furnish such information in his possession relating to any land which is acquired under this Act.

(2) The prescribed authority shall, while holding an inquiry under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil

Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely :—

(*a*) summoning and enforcing the attendance of any person and examining him in oath ;

(*b*) requiring the discovery and production of any document ;

(*c*) reception of evidence on affidavits;

(*d*) requisitioning any public record from any Court or Office;

(*e*) issuing commission for examination of witness.

15. Use of land acquired :— (1) When any land has been acquired under this Act, the Government may undertake or cause to be undertaken such measures as may be necessary for carrying out the Harijan Welfare Scheme.

(2) (*i*) For the purpose of undertaking the measure referred to in sub-section(1) the Government may either hold the land under their own control and management and undertake such measures themselves or through the Corporation on such terms and conditions as may be determined by them, or transfer the land to the local authority concerned or the Corporation for the purpose of undertaking those measures.

(*ii*) where the land is transferred as provided in clause(1) such land shall vest in the local authority concerned or the Corporation, as the case may be, and the local authority or the Corporation shall undertake the measures referred to in sub-section(1) in accordance with such plans as may be approved by the Government, and subject to such directions as may, from time to time, be given by the Government.

16. Delegation of function :— The Government may by Notification in the *Tamil Nadu Government Gazette*, direct that any power conferred or any duty imposed on them by this Act, except the power to make Rules, shall, in such circumstances and under such conditions, if any, as may be specified in the Notification, be exercised or discharged also by the District Collector.

Explanation :— For the purpose of this Section 'District Collector' shall include the District Revenue Officer.

17. Bar of jurisdiction of Civil Court :— Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction in respect of any matter which the Government or the District Collector or the prescribed authority is empowered by or under this Act, to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be

taken in pursuance of any power conferred by or under this Act.

18. Prescribed authority, etc. to be public servants :— The prescribed authority and person authorised under this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (Central Act XLV of 1860).

19. Protection of action taken in good faith :— (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith, done or intended to be done in pursuance of this Act or of any Rule or order made thereunder.

(2) No suit or other legal proceeding shall lie against the Government or the District Collector or the prescribed authority or any authority or officer subordinate to the Government or the District Collector or the prescribed authority for any damage caused or likely to be caused by anything which is, in good faith, done or intended to be done in pursuance of this Act, or of any Rule or order made thereunder.

20. Land Acquisition Act not to apply :— Save as otherwise provided in this Act, the provision of the Land Acquisition Act, 1894 (Central Act I of 1894) shall cease to apply to any land which is required for the purpose specified in sub-section (1) of Section 4 and any such land shall be acquired by the Government only in accordance with the provisions of this Act.

21. Act to override other laws:— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom usage, or contract or decree or order of a Court or other authority.

22. Application of the Act to certain pending cases of acquisition :— (1) The provision of this Act shall apply also to any case or cases in which proceedings have been started before the commencement of this Act for the acquisition of any land for the Harijan Welfare Scheme under the Land Acquisition Act, 1894 (Central Act I of 1894) (hereinafter in this Section referred to as the said Act) but no award has been made by the Collector under Section 11 of the said Act before such commencement, as if —

(*i*) the Notification published under sub-section (1) of Section 4 of the said Act, or

(*ii*) the declaration made under Section 6 of the said Act, or

(*iii*) the notice given under sub-section (1) of Section 9 of the said Act, where a notice to show cause against the acquisition of the land served under sub-section (2) of Section 4 of this Act.

(2) Nothing contained in sub-section (1) shall apply in relation to any land unless and until after the District Collector has published a notice in the *District Gazette* to the effect that the said land is required for the purpose specified in sub-section (1) of Section 4 of this Act.

23. Power to make Rules :— (1) The Government may make Rules for carrying out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such Rules may provide for or regulate :—

(*a*) all matters expressly required or allowed by this Act to be prescribed, and

(*b*) the manner of authentication or orders and other instruments of the prescribed authority

24. Publication of Rules, the date of the commencement of the Rules and Notification and placing of Rules and Notification on the table of the Legislature :—

(1) (*a*) All Rules made under this Act shall be published in the *Tamil Nadu Government Gazette* and unless they are expressed to come into force on a particular day shall come into force on the day on which they are so published.

(*b*) All Notification issued under this Act, shall unless they are expressed to come into force on a particular day, come into force on the day on which they are published.

(2) Every Rule made or Notification issued under this Act shall, as soon as possible after it is made or issued, be placed on the table of both Houses of the Legislature and if before the expiry of the session in which it is so placed or the next session, both Houses agree in making any modification in any such Rule or Notification or both Houses agree that the Rule or Notification should not be made or issued, the Rule or Notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Rule or Notification.

A GLOSSARY OF REVENUE TERMS

Adangal: A book containing accounts of a whole village.

Amani: A system of land revenue under which the Government's share of the produce is taken in kind. A direct management of a village by Government Officers without the intervention of the Zamindar.

Anadi Karambu: A piece of ground that has never been cultivated.

Appurtenant: pertaining ; incident or relating to, as a legal right belonging to another. *e.g.*: gardens to a home

Chitta: An account particular, for land or cash ; a rough draft.

Darkhast: proposal to cultivate or rent land; a request; and application; revenue petition.

Fasli: The revenue year commencing with Ist July and ending with 30th June. The English year is arrived at by ending 591 to the fasli year.

Jama: Jumma, the amount ; aggregate ; the total amount of rent or revenue payable by a Cultivator or a Zamindar.

Jamabandi: The settlement of amount of revenue assessed upon an estate, a village or district. It is used to signify the annual settlement with the Cultivator under the Ryotwari settlement.

Kabuliat: An agreement ; engagement in writing; a counter part.

Karai village: Village divided into karais or shares which are or ought to be periodically distributed.

Kist: Stated payment, instalment of rent. It denotes the portion of annual assessment to be paid at specified periods in the course of the year.

Kollai: A backyard.

kudivaram: The share of the Cultivator in the produce raised.

kudiyiruppu:	The site of any dwelling house or hut occupied either as tenant or as licencee by an agriculturist or agricultural labourer.
Lakhiraj:	Rent free land.
Madai:	A sluice; a channel from a pond or the like for irrigation.
Manavari:	Land of which the Cultivator depends solely upon rain, not being irrigated artificially ; dry cultivation.
Melwaram:	The share of the produce due to the landlord or the State.
Nanjai:	Soil that is fit for the cultivation of rice. admitting of artificial irrigation.
Peishkush:	The rent payable by the owners of permanently settled estates to Government.
Punjai tirwa:	Assessment fixed on dry lands.
Rajabhogam:	The share of Government
Sagupadi:	Cultivation; village; farming
Seikal:	Land made fit for cultivation ; or cultivated lands generally.
Shavi:	Withered Crops.
Takavi:	An advance made by Government to Ryots for seed-grains, digging wells and other agricultural purposes.
Taram assessment:	Assessment based upon the classification of soils.
Tirwa:	A money assessment of revenue on land or on its produce.
Tirwapat:	Land paying a fixed money assessment.
Waram:	A share of the produce of land ; the produce of a field.
Warapattu:	Land held on waram or the sharing tenure as distinguished from tirwapattu land held on a fixed rent.

SUGGESTED QUESTIONS

I. EARLY REVENUE ADMINISTRATION IN TAMIL NADU.

1. Briefly trace the early revenue administration prevailed in Tamil Nadu.

II. THE VILLAGE SYSTEM IN TAMIL NADU

1. The village system of India is "one of most remarkable features of Indian Civilisation". Explain.
2. What are the main causes for the decline of village communities?
3. Write a note on Mirasi tenure.

III. RYOTWARI SYSTEM

1. State the characteristic features of Ryotwari system. What are the rights and obligations of Ryotwari pattadar?
2. Write a note on (*i*) Patta, (*ii*) Melwaram, and (*iii*) Kudiwaram

IV. THE ZAMINDARI SYSTEM

1. Give an account of Zamindari system that existed during the British period and explain the steps taken in the direction of its abolition and conversion into Ryotwari system.
2. (*a*). Explain the reasons for the introduction of Permanent Settlement in India. (*b*) What are distinguishing features of the Permanent Settlement?
3. Give the reasons that led the Government to pass Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. What are the salient features of the Act of 1948?

V. INAMS

1. Explain beneficial tenures that prevailed in Tamil Nadu. How they were classified? What is object behind the granting of Inams.
2. Write a note on (*a*) Service grants and (*b*) Personal grants.

VI. RIGHT RO PROPERTY UNDER THE CONSTITUTION

1. The guaranteed right to property is a road-block in the path of agrarian reforms. Elucidate this statement.
2. Explain how the Constutitional hurdles in the way of agrarian reforms have been removed by Constitutional amendments.
3. Write a note on (*a*) Eminent Domain (*b*) payment of compensation (*c*) R.C. Cooper vs. Union of India (*d*) Kesavananda Bharati vs. State of Kerala (*e*) Waman Rao vs. Union of India
4. Write a Note on Minerva Mills Ltd. vs. Union of India

VII. THE TAMILNADU CULTIVATING TENANTS PROTECTION ACT, 1955

1. Explain the scope and object of the Tamil Nadu Cultivating Tenants Protection Act, 1955. What are the salient features of the Act?
2. Who is cultivating tenant ? Elaborate your answer.
3. Discuss the protection given to a cultivating tenant against eviction under the Tamil Nadu Cultivating Tenants Protection Act, 1955.
4. Under what circumstance a landlord can seek to evict a cultivating tenant under the Tamil Nadu Cultivating Tenants Protection Act, 1955?
5. Mention the circumstances in which the cultivating tenants are not entitled to the restoration of possession under the Tamil Nadu Cultivating Tenants Protection Act, 1955.
6. Summarize the provisions under the Tamil Nadu Cultivating Tenants Protection Act, 1955 relating to special privileges conferred on a member of Armed Forces.
7. Describe the relief given to the cultivating tenants with respect to arrears of rent and the debtedness under various legislations passed subsequent to the Tamil Nadu Cultivating Tenants Protection Act, 1955.

VIII. THE TAMILNADU CULTIVATING TENANTS (PAYMENT OF FAIR RENT) ACT, 1956

1. Explain the salient features of the Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, 1956.
2. What is fair rent? Under what circumstances, it can be altered ?
3. Write a note on :

   (*a*) Kaiaeruvaramdar

   (*b*) Mattuvaramdar

   (*c*) Rent Courts and Rent Tribunal

4. (*a*) What are the rights and liabilities of cultivating tenant and land owner?

   (*b*) Explain the provisions relating to surrender of land under the Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, 1956.

IX. THE TAMIL NADU AGRICULTURAL LANDS RECORD OF TENANCY RIGHTS ACT, 1969

1. State and explain the object of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969. What are its salient features?
2. Describe the procedure to be followed in preparing the record of tenancy rights by the Record Officer under Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969.
3. Write a note on the Advisory Committee constituted under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969.
4. Explain fully the scope of bar of jurisdiction of Civil Courts with respect to any matter the Record Officer is empowered to determine under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969.

X. THE TAMIL NADU OCCUPANTS OF KUDIYIRUPPU (CONFERMENT OF OWNERSHIP) ACT, 1971

1. Discuss the scope and object of the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971. What are its salient features?

2. Write a note on :
   a. Agricultural labourer, b. Agriculturist,
   c. Agricultural land, d. person interested,
   e. authorised officer.

3. What is meant by kudiyiruppu? What are the conditions to be satisfied in order to get ownership of kudiyiruppu?

4. Discuss the provisions relating to providing alternative site to the occupant of kudiyiruppu.

5. Explain the law relating to payment of compensation and reimbursement to the Government under the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971.

6. Can the kudiyirruppu or superstructure conferred on an occupant be alienated? If it is alienated, what are its consequences?

7. Examine the scope of bar of jurisdiction of Civil Courts under the provisions of Tamil Nadu Occupants of Kuidyiruppu (Conferment of Ownership) Act, 1971.

XI. THE TAMIL NADU LAND REFORMS (FIXATION OF CEILING ON LAND) ACT, 1961

1. Examine the objects and reasons for enacting the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961 and its salient features.
2. Define the terms 'ceiling' area and 'family'?
3. (*a*) Explain the meaning of the expression religious trust of public nature and its ambit.

   (*b*) Are private trusts exempted from the operation of this Act?
4. Summarize the provisions relating to fixation of ceiling on land holding under Section 5 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961. What is the ceiling area for a family?
5. Describe the procedures to be followed in the preparation and publication of draft statement and final statement by the authorised officer.
6. Point out the contents of the return to be furnished by a person holding land in excess of the ceiling area.
7. Explain the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 regarding acquisition of surplus land required for a public purpose.
8. (*a*) What is the penalty provided for, on future acquisitions in contravention of Section 7 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961?

   (*b*) When is partition or transfer valid under this Act ?
9. Write a note on constitution and powers of Land Board constituted under the Act of 1961.
10. Explain the provisions relating to determination of amount for the land acquired by the Government.
11. Discuss the claims of mortgagee, charge holder, limited owner and maintenance holder where the surplus land is held by them.
12. Discuss the special provisions provided for the cultivating tenants regarding their ceiling area.
13. (a) What is the ceiling area for a cultivating tenant under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961?

    (b) What is the procedure to be followed against the cultivating tenant who acquires any land by lease in excess of the ceiling area?

14. Mention the category of lands exempted under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961.

15. Write a note on Land Tribunals.

16. Explain the provisions relating to constitution of Tamil Nadu Land Reforms Special Appellate Tribunal.

17. Write short notes on :
    (*a*) Draft assessment roll,
    (*b*) Land Commissioner,
    (*c*) Authorized officer,
    (*d*) Religious Trust of a public nature,
    (*e*) Land Board.

XII. THE TAMIL NADU BUILDINGS (LEASE AND RENT CONTROL) ACT, 1960

1. Discuss the scope and applicability of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960?

2. Who are called the landlords and tenants within the meaning of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960?

3. What are the factors to be taken into consideration while calculating the market value of the site?

4. How is fair rent determined under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960?

5. On what grounds, a tenant can be evicted by the landlord under the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960?

6. Discuss in detail the following grounds of eviction:
    (*a*) Personal occupation,
    (*b*) Additional accommodation, and
    (*c*) Demolition and reconstruction.

7. (*a*) What is effect of tenant's failure to pay the rent during the pendency of the proceedings?
    (*b*) Explain the applicability of *res judicata* in rent control proceedings.

8. A Court executing the decree cannot go behind the decree between the parties or legal representatives - Explain.

9. What are the powers of the Appellate Authority under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960?

10. The revisional jurisdiction is paternal, supervisory in nature - Explain.

11. Discuss the Government's discretionary powers to grant exemption to any buildings under the Act 1960. What is the object of providing this measure?

12. "The remedy of exemption under Section 29 of the Act, is not a substitute for remedies available to a landlord for eviction under this Act itself" – Discuss.

13. Write a note on :
    (*a*) Controller
    (*b*) Sub-tenant
    (*c*) statutory tenant
    (*d*) legal representative
    (*e*) wilful default
    (*f*) building
    (*g*) depreciation
    (*h*) cost of construction
    (*i*) amenities
    (*j*) denial of landlord's title

XIII. THE LAND ACQUISITION ACT, 1894

1. Define the following :
    (*a*) Public purpose
    (*b*) Person interested
    (*c*) Company
    (*d*) Award of Collector

2. Discuss fully the procedure to be followed in the publication of preliminary Notification and public notice of the substance of Notification.

3. The Notification under Section 4 is the starting point of the acquisition - Explain this statement, highlighting its significance.

4. State and explain the meaning and scope of the expression public purpose under the Land Acquisition Act 1894.

5. Discuss in detail about hearing of objections by the Collector and the Collector's inquiry in land acquisition proceedings.

6. Describe the matters relating to declaration of intended acquisition by the Government under Section 6 of the Land Acquisition Act, 1894.

7. Explain the procedure to be followed by the Collector in holding enquiry and making an Award. What is the effect of that Award?

8. Discuss the role of Collector in land acquisition proceedings.

9. (*a*) Explain the extraordinary power of the appropriate Government in acquiring land in cases of urgency

   (*b*) Under what circumstances this power can be exercised?

10. What are conditions to be fulfilled in making a reference to the Court under Section 18 of the Land Acquisition Act, 1894 ?

11. What are the matters to be taken into consideration in determining compensation?

12. Discuss the scope of discretionary power of the Collector to refer the disputes as to apportionment to the decision of the Court.

13. (*a*) Define "Company" for the purpose of acquisition by land under the Land Acquisition Act, 1894.

    (*b*) What are the conditions to be satisfied for the purpose of acquisition of land for a Company?

14. What are the purposes for which the land may be acquired for a Company?

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